88-416

No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

LOUELLA F. BENSON,

Petitioner,

v.

LOIS F. BEARB
LESLIE FAUL,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Was it legal error for petitioner to be denied access to the "New Passage" by the Judge in view of the fact that it was not an issue; it was not brought up at trial and respondents admitted in 1985 that she has such access?

2, Was it error for the Courts to ignore the breach of agreements by the respondents in view of losses petitioner took in view of the agreements and respondents admitted their obligations to the October 12, 1983 agreement and supplement of November 12, 1983 and the fact that petitioners met their requirement for increased amount in the October 12, 1983 agreement?

3. In view of their having mislead petitioner as to the access to the road and their efforts to get the properties back on March 17, 1986, with secret misrepresentations after requesting and receiving $38,800 from her in 1983, the losses she took, etc., did not the Courts err in not enjoining them from her life or property?

4. Did the Court err in not letting petitioner address fiduciary matters pleaded in view of her executor brother's actions, e.g., misleading her as to the road; "No Bids" etc., and the unnecessary pain and expense she has incurred?

5. Was it error for the Courts to ignore the drainage problems caused by Respondents and on-going in view of petitioners evidence that Bearb "covered up;; the drainages?

6. Was it not error for the Courts to ignore the respondents' obstructed drainages, in view of defense's witnesses informing the Court that Leslie Faul's drainages would have to be opened up?

7. Was it not error for the Courts to not allow petitioner's highly qualified engineer's report, and her evidence by other highly qualified experts, eye witnesses, neighbors for many years, documents and photos?

8. Since Petitioner's property was enclosed at the time of the agreements and partition, did not petitioner have a right to the old Faul Limestone Road as it was at the time of the agrements?

9. Did not the Courts err in ignoring obstructions to natural drainage patterns and the fact that Bearb *created* new ditches where there were none after obstructing the natural public and private drains?

10. In view of DOT's use of "oust" in public ditches where dirt obstruction causes overflows on petitioner's property, causing erosions and coupled with respondent's private obstructions, destroying her land and denying use of property, is this not a "taking" of her property for public use since they are *creating* a ditch in the middle of her land where there has never been any? (See A200 for testimony of chemist Wilma Subra)

11. Did the Courts err in denying petitioner the sound tapes of trial, in view of serious mistakes, omissions and distortions?

12. Did the Court err in not allowing petitioner to enter the letter from DOT of June 13 1984 with either Witness Higgins or LeBlanc? Mr. Higgins read letter in record. A129-130.

13. Did the Court err in ignoring that Bearb did not obtain a permit prior to obstructing natural drains as Engineer Langlinais indicated was required?

14. Was it error for the Courts to allow LeBlanc, Kidder and E.J. Faul to testify as experts in the field of drainage engineering when Kidder and Faul are not engineers and not any of them were listed as an expert for discovery purposes; no reports were produced, all in violation of FRCP, ARCP, and was it error for the Courts to allow their engineering expert, Mr. Wolfe, to testify since he did not appear when subpoenaed for a deposition?

15. Was it not error for the Court to use the "let it all in" approach as to "experts" and which resulted in misleading and confusing the trier of fact?

16. Since the Judge relied on evidence not founded in fact and ignored petitioner's evidence, was this error?

17. In view of the serious mistakes in the Court's opinion, the fact that he copied from "filings" of March 17, 1986, with misrepresentations denied to petitioner prior to his ruling adverse to her, the fact that he did not let her go into most of this at trial, but in fact copied from it in his opinion after opposing counsel resubmitted same with his post-trial brief, is this not a compounded violation of Constitutional and due process rights, FRCP?

18. Since the Fifth Circuit did not let her supplement the record when she was copied in 1987 after she was before them, and subsequent denial, is this not a violation of equal justice under the law, a right to notice and to be heard, ARCP?

19. Did not the Court err in not allowing reformation of deeds to make corrections in view of the evidence of fraud (the road was no longer there, the missing acreage, etc.)?

20. Does not petitioner have a right to a hard surface road as she had without drainage problems, and did not the Courts err in not having the obstructions removed and drainage restored?

21. Did not the Judge show undue discrimination in allowing non-experts of opposition to testify as "experts" but denied Engineer Langlinais' report and would not let him testify as to the value of the property in spite of the fact that he does partitions, etc.?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To: The Honorable Chief Justice of the United States and the Honorable Associate Justices of the Supreme Court of the United States.

The petitioner respectfully prays that a writ of certiorari issue to review the judgment and rulings of the United States Court of Appeals for the Fifth Circuit entered on June 28, 1988, and the denial of Petition for Rehearing entered on July 2, 1988, that affirmed the judgments and opinion entered against the petitioner in the United States District Court for the Western District of Louisiana, (Lafayette-Opelousas Section O), No. 84-2541, 87-4692.

OPINIONS BELOW

The rulings of the Court of Appeals (reprinted at A1 to A7) affirming the rulings and opinions of the District Court which are reprinted at A8 through A14.

JURISDICTION

The Judgments of the Court of Appeals for the Fifth Circuit were entered on June 28, 1988, and denial of Petition for Rehearing was entered on July 22, 1938. On August 5, 1988, the Court of Appeals stayed the issuance of the mandate until September 5, 1988. The Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1), etc. Per Motion Mandate stayed until 9/9/88.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

Fourteenth Amendment to the United States Constitution, Section I:

> SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sixth Amendment to the United States Constitution:

> Right to know and to "look them in the eye", etc.

Fifth Amendment to the United States Constitution:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a grand jury, except . . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Fourth Amendment to the United States Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants

shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Virginia State Constitution

The Louisiana State Constitution and Code, including but not limited to 2313

Privacy Act

Civil Rights Restoration Act

Federal Rules of Appellate Procedure

Federal Rules of Civil Procedure.

STATEMENT OF THE CASE
(Factual)

As shown A15, the complaint in subject case filed on September 21, 1984, was for diversity, breach of contract agreements, alterations and obstructions of natural drainages, to provide access on a hard surface road and replace the destroyed Faul Limestone Road, to have corrections made in deeds and to remove the obstructions of drainages and to repair areas damaged, for general damages, for fiduciary violations as to Respondent, Leslie Faul, for lack of use of petitioner's property, for injunctions to stop the respondents from interfering with petitioner's life and property and to enjoin them from altering drainages and/or flowing water onto respondent's property, including any overflow from highway ditches. The respondents in subject case are Lois F. Bearb and Leslie Faul. On September 21, 1984, petitioner had also filed a related case, CV84-2540, against Deputy Forest Bearb of Acadia Parish, the husband of Defendant Lois F. Bearb, civil rights violations, etc.

Subject case CV84-2541, and CV84-2540 had been consolidated for trial in March of 1986, at which time petitioner was in Louisiana and ready for trial. The trial was delayed and subsequently, Deputy Forest Bearb, et al, CV84-2540, obtained summary judgment without a hearing, although amongst the issues pleaded was that Deputy Bearb had destroyed the Faul Limestone Road, created obstructions and constructions, etc., all to petitioner's detriment

and ignoring her rights. The same Judge who granted summary judgment to Deputy Bearb, et al (although she had pleaded Deputy Bearb had destroyed the road, etc.) presided in CV84-2541 in August of 1987, and was in a position to have to protect his prior decisions, denying injunction in subject case and granting summary judgment to Bearb in CV84-2540, all without hearing and before peitioner was copied with secret misrepresentations given to him in March 1986. As shown at A25, she was not copied in March 1986, and her evidence shows they knew she could prove untruths they gave the Judge in March 1986 (18 pages of "fact and law" attachments still have not been made available to her!). She was only copied in January of 1987 with "18 pages" when she asserted herself after being tipped off by their supplemental filing of "fact and law". It is clear at 301-302 of the record that she was not copied and that the Judge knew she was not copied. As shown at A26, pg. 4, L-21-25, on July 30, 1987, petitioner told the Judge of this prior to trial. After his January 1987 letter indicating that he had copied petitioner, in his *reply brief* to the Fith Circuit in February 1988, at pg. 17, 28, opposing counsel admitted he had not copied petitioner, and he fails to say the Judge copied from misrepresentations without due process! In fact when petitioner learned of the misrepresentations filed without copying her, she was before the Fifth Circuit in all cases, including CV86-0489, and the Fifth Circuit did not let her file supplements to rebut and inform the Court, so the Fifth Circuit, too, on appeal, was in a position to have to reverse their prior decisions after they would not allow supplements! A7, order of 2/17/87.

At trial in July and August, 1987, the Court did not allow petitioner to go into many crucial issues and which defendants had misrepresented in secret filings, and did not allow her to enter many crucial exhibits which she had listed to show what had transpired during proceedings since her father died (parole evidence and which would also apply to fiduciary violations and enjoinment pleaded), but after the trial, counsel for the defendants resubmitted his 1986 filings with misrepresentations without copying her prior to filing, with post-trial brief, which petitioner was not allowed to rebut at trial, and which the Court copied from in his opinion against petitioner as shown at A9.

The secret misrepresentations bear on all cases; note at A28 in his reply brief in subject case, counsel refers to *Ally* case CV86-0489 which derived from subject cases. After not having copied petitioner with briefing to the Supreme Court (in spite of written request so that she could reply) and after her Writ was denied, in 1988, opposing counsel admitted in writing the "Supreme Court had been briefed by both parties" in recent proceedings in part of that case on remand in which there have been other unconscionable developments to discredit opposition, which will be filed in future Writ, she needs ruling re other defendant. FRCP 57-b, 1988 affidavits shows 1985 affidavit phony.

At A5 is copy of the Fifth Circuit's Order of June 30, 1988, in which they denied petitioner's motion for sound tapes to list and make corrections, which would have shown serious mistakes, omissions, distortions and what transpired at trial. A6 is Fifth Circuit's Order of June 30, 1988 allowing petitioner's supplemental brief.

The petitioner's mother died intestate in 1974. The defendants-respondents worked in concert with E. J. Faul who wrote plan letter of October 23, 1981 (A29) "to purchase this property in my name and I will allow no one to back in for their share unless I so desire." See A31, a bid for $17,000 by petitioner for the improvements of her deceased parents dated October 29, 1984. See A32 by Repondent Executor Leslie Faul of November 7, 1981. "No bids I have already won it and will fight you in the courts or otherwise to keep you from getting it." Petitioner insisted upon bidding on the improvements; she and two other heirs had not agreed to the partition, unlike the executor misrepresents. In 1983, Respondents Lois Faul Bearb, Leslie Faul (and other heirs E. J. Faul and Izena Kidder), sued petitioner after she insisted on bidding on improvements. *E. J. Faul, et al vs. Louella F. Benson,* 89,191-B 1983. As shown herein, after they gave petitioner agreements in 1983, petitioner signed the partition in view of their agreements and for which she took losses, and the suit against her was non-suited.

After petitioner accepted their agreements in good faith, the Bearbs, who were trying to obtain the homesite, ignored the

agreements and in December 1983 destroyed the Faul Limestone Road upon which heirs had agreed that petitioner would have full access (including Lois F. Bearb), and "covered up the drainages", altered the natural area and put a "new mud road" in a different location. Petitioner's property was enclosed at the time. After she was not able to have corrections made, she filed subject suit in September of 1984.

After their agreements plaintiff (petitioner) and all heirs were allowed to bid on improvements and petitioner acquired the homesite in November of 1983, but it was clear from repondents' "filings" of 1986 that they were trying to get the property back after petitioner took losses, and after she spent $30,000 on improvements. This is the same property E. J. Faul attached in September of 1987 with the help of their same counsel, after petitioner, with justification, attacked E. J. Faul's credibility in good faith at trial of CV84-2451 in efforts to prevent further harm, but their counsel covered up misrepresentation of E. J. Faul and then swore that petitioner owed E. J. Faul $100,000 because she in good faith mentioned misrepresentation. This is the same property respondents and E. J. Faul had plans to obtain in 1981 before suing petitioner in 1983! Complaint against D.O.T. moved to State Court.

STATEMENT OF FACTS

In the foregoing the respondents' misrepresentations of "fact and law" to the Judge of March 1986, prior to decisions adverse to petitioner, and without copying her until many months after rulings, and which the Judge copied from in his opinion of September 16, 1987, after petitioner was not allowed to go into much of this at trial, and which opposing counsel resubmitted with his post-trial brief, will simply be referred to as "filings."

The trial judge went beyond matters pleaded in denying petitioner any access, e.g., he denied access to the "new road" also and which was not even an issue, and as shown at A80-1, *on March 20, 1985, Respondent Leslie Faul admitted she has access to the new road and in April, 1985, Respondent Lois F. Bearb admitted* (A83-4) *petitioner*

has access to the new road, and both under oath. Too, the agreements clearly show that they agreed that petitioner would have full use of the old road becuse it was the only road at the time, and as shown at A70 in parol evidence entered, on April 30, 1982, petitioner had stipulated that "she would have to have permanent use of the road as it is now and the improvements would remain where they are" which was why they put "full use of road to her property" in the agreement to induce her to sign the partition. Also facts show in 1983-4 petitioner's property was enclosed and she took economic losses in view of their agreements.

The trial Judge's anger and shouting frightened petitioner, and coupled with his interruptions, and undeniable prejudice and denials, prevented her from entering crucial evidence, all of which could be best understood by the sound tapes, including the serious mistakes, omissions and distortions.

As shown at A34, 35, 36, pgs 62-64 of Vol. 2, petitioner testifed:

> ". . . there is no way that I can establish the facts without going back as to what happened, . . . (pg. 63 L-5-9) "They have made serious misrepresentations to the Court."
>
> COURT: "I don't care what they said. I don't care what they called you. This is not a liable suit. This is a damage to property suit."

Petitioner was trying to bring up "what they called her" and did not bring up any such thing, but she was referring to misrepresentations in "filings" which are indeed re damages to her property and contract rights.

Judge made prejudice by respondents' frivolous motions in subject case. Petitioner is the only one with objective scientific facts to show she does not have the mental problems and does not need treatments after having volunteered for evaluations and testings after heart injury. Defendants were using past abuses to discredit her and it worked.

In copying from the secret "filings" the Court leaves out that in 1983, the respondents, et al., sued petitioner first in efforts to prevent her from bidding on the improvements.

The Court quoted respondents' 1986 "filings" again in saying the land consisted of "approximately 46.85 acres." Partition trial Exhibit 2 calls for 47.46 acres, and petitioner had listed prior surveys showing 47.46 acres and even more. At Vol. II, pg. 155, petitioner testified (A198 survey):

> ". . . .in the partition, they called for about .6 more than the five times 9.37 . . . you had about .6 less which was the equivalent of the new passage. Mrs. Bearb and Leslie Faul did not let me go on their land to do the survey."

Petitioner also testified that respondents had sent people on her land without her consent. At Vol. II "You heard my expert testify yesterday that the new passage, that mud passage that Mrs. Bearb built could be the missing acreage . . ." As shown in the record at 323-337 with attachments, and as petitioner brought up at trial in her testimony and as shown in the two surveys the respondents had made (petitioner's trial exhibits 8 and 9) there is a serious discrepancy which shows an easement was taken without petitioner's consent and while concealing from her the plat which showed the discrepancy although she had paid her share of the cost of both. The first survey proving the discrepancy was only made available to petitioner by an ally heir after she had signed the partition in view of respondents' agreements. At pg. 155, Vol. II:

> COURT: "I understand there was a discrepancy, but what has that got to do with the right-of-way?"
>
> BENSON: "It is important because if what they call for in the partition is correct, the new road could very well be part of my land."

It is also important because the Judge went beyond matters pleaded and denied petitioner all access, including "new passage" and the missing acreage would at least in part belong to petitioner.

In his opinion copied from "filing", the Judge writes "executor (repondent Leslie Faul) served without compensation for the entire period that the estate was open". See "Factual Statement of Case" and A29, A30, which show that Executor requested compensation which petitioner testified he had received at Vol. III, pg. 102, but that opposing counsel told the Court "it was his misrepresentation . . ." but there are facts in the record to show it was one of E. J. Faul's misrepresentations of March 21, 1985 under oath which his counsel was covering up. See A29, plans of 10/23/81; petitioner's bid of 10/31/81, and Executor's "No Bids", threats of November 6, 1981, A32. See petitioner's page 5 of complaint A20 for general bad faith fudiciary violations pleaded which the Court ignored and A58 to A64, her testimony at Vol. III, pgs. 47-54 for some of the violations. As shown at pgs. 49, 51, the Court said "I don't believe those contentions back in '81 were relevant to this", and I'm not going to receive it" but then he copied from respondents' "filings" misrepresentations re these same matters and other untruths!

It must be pointed out that opposing counsel did not put either respondent on the stand to put any of the misrepresentations in "filings" into evidence; he did not put the respondents on the stand at all, and he did not contest the provisions of the agreements with the other witnesses—not as to the "full use of the old road" nor did he put in evidence or bring up any denial of use of new road.

In quoting from respondents "filings" re *1981* in his opinion the Judge said Leslie Faul and Lois B. Faul (should be Lois F. Bearb) eventually drew Tract 3 where improvements were located when a drawing was held amongst the heirs. Judge not only ignored that petitioner was not allowed to bid in 1981 as aforementioned evidence proves, but petitioner's evidence at pg. 59, Vol. III, A64:

> "This is the letter that shows there were plans before to let a deceased brother's children have a flooded area, and it would be offered to show that after they had their drawing where *I was not present and two others didn't go along with* . . . they [respondents] drew the best part and deceased brother's children had the flooded land!"

. . . . "subject to agreement but it shows a pattern of deceit."

"I have a number of exhibits listed prior to that time and I will have to take my exception to not entering those exhibits."

At pg. 99, L-2-9, petitioner testified:

"Not everybody had signed it. See, they had sued my brother and myself . . . sister, Ura F. Granger —"

Note at pg. 48, Vol. III, A59-60:

PETITIONER: ". . . all heirs had equal rights to acquire the improvements . . . at the time he did not want any bids. He and Lois Bearb wanted it, fifteen thousand, I think it was . . . ." (L-19-25) ". . . in 1981, I submitted a bid for $17,000 and my brother fired back to me a letter saying no bids, I have *won it*, and will fight you in courts and *otherwise* to keep you from getting it."

"At some point in the negotiations, it was proposed that the road be moved to the boundary line between Tracts 3 and 4, so as not leave a 20 or 25 foot section of unusable land running 1,700 feet. Lois Bearb eventually moved the road so as to accomplish this objections."

Again the above was not put into evidence and it is not evidence but copied from secret "filings". At pgs. 146-9, Vol. II, A47, 48, 49, she testified:

"*I had a right to a hard surface road, and I certainly had a right to expect that my properties would not be flooded, because nothing was ever said to me about moving the road, nor at any time did I communicate to anyone anything about moving the road.* The opposite is true." (Emphasis added.)

At pgs. 25-31, Vol. III of IV petitioner testified re and entered her trial Exhibit 59, her proposal of *November 20, 1983*, with a sketch attached to it offering an easement for the back door. Pgs. 25-31, at A54 to A59. At pg. 26, L-6:

"Well, see, I didn't know at the time that they were planning on moving the road, so in that proposal I made reference to an *easement for the back door* . . . . See easement at back door on plat at A134 with proposal 135.

THE COURT: "Now, if you have any document that you want to introduce that's the point we started on, that it was your idea to move the road, put it in."

BENSON: "But that's false, and that's what I.m trying to explain."

(Pg. 30) COURT: "What is it, this 59?"

BENSON: "It's the proposal I had given my brother dated November 20th, 1983 to share the losses, and this is the easement I was talking about to enter the house, because the property line fell there, *and it has nothing at all to do with the road*, and that's when they gave this to Your Honor without copying me, they gave you just this, and this was a gross misrepresentation, because I placed the road where he told me in that letter of March 26, where the road fell, and in my proposal which he did not give Your Honor with this, they presented it separately, and in my testimony of January 1985, (deposition), I had expressly told counsel that there was a proposal that went with this (plat), so they knew it was there."

As shown at page 100, L-8-10, A33, her expert engineer testified: "An easement of some sorts in order to get into the back porch would have been necessitated, otherwise they would not have been able to get out of the porch." The above was the only easement she offered.

Also see A70 letter from petitioner of April 30, 1982, Trial Exhibit 15, specifying permanent use of the road as it was in 1982 with improvements "where they are". Note, too, her rough sketch does not label the road "Bearb Road" but "Faul Road," nor does it say "new passage." Also, in the record of this case in June 1983, in 89-191-B in State Court when they were suing her, she submitted a plan to divide the property into ten lots all facing the *Faul Road*

which they rejected, along with that of 11/20/83 to share losses.

At pgs. 151-156, Vol. II, petitioner testified re and entered her Exhibits 12 and 12-B shown at A133. See A49 to A53, pgs. 151-156. "In this letter when I had requested from my brother where the property line fell within 3 and 4 (the Faul Limestone Road was between Trs. 3 Bearb property and Tr. 4 Benson's), he refused to show it on the plat, but he wrote me this letter on March 26, 1982 (Exhibit 12) in which he says:

> "The first survey showing a ten-foot easement was rejected not by some but by you." Pg. 152, L-1-10.
>
> "The flags run even with the fence that Pop had on the *south* side of the road. The *straight* line runs through the yard and between the house and the 2 posts supporting the south porch."

Petitioner testified at pg. 151, A49:

> ". . . this is marked the old road and old ditch. This is a picture taken from the house towards Highway 343, and this is the old road, this is the old ditch with the fence in it . . . ."

It is quite clear that the Executor represented to petitioner that dividing line between Tracts 3 and 4 was at the fence in the south side ditch next to the *old Faul Road* and moving the road was in no way mentioned to or by this petitioner. Also the missing acreage equivalent to the "new passage" supports petitioner's position. See her testimony at A.52-3, pgs. 155-6. The Judge says it makes "no difference whose property the new road fell on", then denied access to both roads, ignored floodings, caused by moving road, missing acreage, ignored agreements and evidence.

After opposing counsel did not put respondents on the stand, petitioner called respondent Lois F. Bearb, as shown at pgs. 212-13, Vol. IV, A68 to A69, attached, and it was clear that she and her two brothers were secretly planning to destroy the road since 1981 while they misled petitioner for years to believe she would have full use of it, and kept 3 other heirs in dark.

BENSON: "When did you first decide to move the road?"

BEARB: "The day of the drawing in 1981, and I have two of my brothers—" "I said, with two of my brothers present—"

BENSON: "And I was not present at your drawing?"

Contrary to what the opinion says as to petitioner's letter of November 7, 1983, the record states (received by Bearb prior to her obstructions causing flow of water and toxics on Benson's, Tr. 4):

> "If there are not any vetos from any of the others and your No. 2 is a bona fide offer it certainly has possibilities." ". . . .I must make it clear that I do not go along with any clauses allowing such things as digging for pea gravel on my property or for the storage of toxics, wastes or such or allowing the flow of such things on my property."

Attached at A75 to A76 is the agreement of October 12, 1983 (Trial Exhibit 1) signed by respondents and concerned heirs with the appraisal by Glenn Leger attached to it. As shown at Vol. 2, pgs. 83 to 87, A38 to A41, Eura F. Granger agreed to divide Tr. 4 instead of selling it via letter mailed on November 7, 1983, but she writes even after she had decided to keep her land at the time "she was told that I would have access to the road."

"At that point, she didn't think that she would go along with selling, we'd have to talk about it, but that she would agree to dividing Tr. 4 and she would take the front four acres and gave me .68 of an acre more for taking the back. You see, there's a small part of the house and some of the improvements that fall on the back of Tract 4. And she said in that letter that she was told that I would have access to the road."

Petitioner did not call her sister Granger because opposing counsel had not objected to the letter, and he had in fact not objected to it in stipulation order filed in February of 1986. At pg. 85, L-4:

> ". . . there was some confusion because Leslie and Lois Bearb wanted only the front land, so in between the Oc-

> tober 12th letter, 1983 and the supplement of November 21 to the October 12 original proposal, there were problems because they couldn't get just front land after—"[1]

That the respondents each wanted the front land facing Highway 343, worth twice the amount of back land relates to fiduciary matters pleaded but they clearly agreed to both agreement of October 12, 1983 and supplement to same of November 21, 1983 in view of development in the interim when Lloyd Faul agred to sell his interest to Respondent Leslie Faul which included the front of Tr. 5. At pg. 85, L-20, Vol. 2, petitioner testified:

> "Well, anyway, the thing that made both agreements go through is that my brother Leslie Faul, in the supplemental of Nov. the 21st, 1983, supplement to the October 12th that he handed me on November the 23rd, 1983 when my husband and I came to Louisiana said that there had been a development in that he talked to my brother Lloyd Faul in Virginia, and Lloyd had agreed to sell his interest to Leslie, so that gave him another share that would assure him of the front of Tract 4 because he was buying Ewell Faul's share too, so because of that —" (That is an error and should be front of Tr. 5 as documents in record show.

Note at petitioner's trial Exh. No. 2, A77 attached, on supplement agreement of November 21, 1983, Leslie Faul clearly wrote "Supplement to proposal of October 31st (note in opinion court admits the mailing was on October 31st but the proposal agreement

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[1]As shown in supplement to October 12, 1983 agreement dated November 21, 1983, in foregoing, it was the fact that Lloyd Faul decided to sell his interest in Tract 5, that allowed both agreements to go through; Leslie Faul then had the front of Tract 5 also, and Lois Bearb the front of Tract 3, and unlike they misrepresented in secret "filings" of March 17, 1986 to try to negate agreement, the sale to Leslie Faul by Lloyd Faul was not after Leslie Faul signed over property to petitioner on March 5, 1984, it was before via Deed 684769, recorded in Book 25, pg. 370 on March 2, 1984, as shown on supplement to October 12, 1983 agreement dated November 21, 1983, St. Landry Parish. Louisiana, and entered as petitioner's trial exhibit at trial. See A88-9 for their misrepresentation re Lloyd Faul sale date; A90-93, deed, and Vol. III, p. 67).

was dated October 12, 1983). Petitioner testified at pg. 95-96, 105.

". . . the reason the Oct. 12th proposal agreement went through is because of the development of Nov. 21st, the supplement to that. When Lloyd Faul agreed to sell to Leslie Faul, they were able to acquire frontage, and because of that—"

Court: "The stumbling block, what you're saying, as of Oct. of '82 was cured later, and therefore it allowed the Oct. 12th, '82 thing — a condition was later fulfilled?" (Should be of '83)

Mrs. Benson: "Because of the supplement. Supplement means in addition to in the English language."

Again, the respondents did not put anything in evidence and to further show that the "facts" re the agreements were misrepresented, in "filings" while the Judge copied from in his opinion, petitioner did not just say she accepted his Nov. 21, 1983 proposal as shown in "filings" without copying her. As shown at her trial Exh. No. 4, and A78 and as she so testified she accepted their agrements and signed the partition on November 26, 1983 in view of their agreements; Vol. 2, pg. 98:

> "It's dated November 26, 1983 and it says, 'Dear Leslie: As per your letter of November 21st, 1983 *and supplement to proposal of October 31st,* I accept your proposal to purchase the back section of number three where the house and improvements are located and will *meet your requirements.*" . . . Please take immediate steps to have the suit dismissed promptly.' "

Note that petitioner expressly added the original agreement and to further show that both agreements were accepted at p.100, Vol. 2, L-4:

> "If you will recall, I read that and I will meet your requirements and this relates back to the original proposal. Because the requirements in the proposal that I'm referring to is the increased appraisal price *attached to the Oct. 12 —"* A75 to A76. Note the appraisal is mentioned in the agreement of October 12, 1983 and respondents

> "agreed that she will have full use of the road to her property."

Judge would not allow her cancelled checks for improvements $18,800, and for land where improvements are $20,000, which shows "per agreements" which Respondents requested in Nov. and Dec. 1983, to further show that the agreement of October 10, 1983 with appraisal increase and which assured full use of the road had also been accepted and gone through. She meant their requirements. To *induce* her to sign partition, they icluded full use of road as it was in 1982, p. 74-76 A36-8. However, after petitioner accepted their agreements in good faith, signed partition executor failed to record agreements. A73, 74 cancelled checks. A66 to A67, Vol. 3, pgs. 97-98 her testimony. pg. 121-123, A45 to A47. Another loss petitioner took in view of their agrements was that of taking an interest in the flooded devaluated Tract 1, instead of the undivided interest in entire estate which she had purchased from her brother Harvey Faul in June 1983. A121 to A125 and transcript at Tr.____ Vol.____ A____ to A____.

At trial Exh. 6-B, A126, pg. 97, Executor admittred to both agreements:

> "Enclosed is the 'Act of Partition' between Lois and I. It does not contain all you wanted, but it does fulfill our *agreements* of Oct. 12 & Supplement of Nov. 21." It is common to servitude of passage agreements in St. Landry Parish.

As to not containing "all you wanted" what executor was saying that unlike their agreements to full use of the Faul Limestone Road to her property, the road had been destroyed and moved, the drainage ditches alongside the road and in public ditch "covered up", and instead they granted access to the new mud passage. As shown at A94 to A99, petitioner's Exh. 6 at trial on December 9, 1983 respondents legally divided Tr. 3 and Leslie Faul received right of passage for he and his successor: A97-98.

> "As a consideration for this Act of Partition, Bearb agrees to give to Faul, but only for the use of the owner of the tract he receives in this partition, servitude of passage

> of twenty (20') feet in width *commencing on Louisiana Highway 343,* adjacent to the Southerly boundary of said Tract 3, and running in an Easterly direction along the Southerly boundary of Tract 3, as shown on the attached plat, a distance of nine hundred forty-six and 56/100 (46.56') feet, or to the property acquired by LESLIE FAUL, in this partition. It shall be the duty of Faul, *or his successor* in title to said property, to maintain this right of way in good condition with shell. . ." emphasis addded.

Petitioner is the ***successor in title*** to said property and the *owner* of the tract Leslie Faul received and he did transfer ". . . any and all rights, title and interest he had in and to servitude. . ." on March 5, 1984 as shown at A101 to A106, petitioner's trial exhibit No. 7.

The Judge is clearly mistaken in quoting from respondents' secret "filings" of March 17, 1986 in saying that the contract did not grant petitioner access to old road and/or that the deed Respondent Leslie Faul signed on March 5, 1983 (should be March 5, 1984, see A103), did not give petitioner access to the new road from its intersection with Highway 343 until it intersected with petitioner's portion of Tr. 3. Petitioner signed and recorded the deed on September 5, 1985, A105 (not September 5, 1983 as the Court shows in his opinion) after lawyers informed her the Courts could have respondents correct the drainage problems, and have them restore the Faul Limestone Road and natural area to give her what they agreed to and what she paid and took losses for by reformation of deeds. See A75 to A76 and A77, the agreements were prior to deeds.

Again the opposition did not put anyone on the stand to put anything in evidence as to the denying agreements for use of the Faul Limestone Road, nor as to the denial of the "new mud passage"; it's simply not evidence, the Judge copied from secret "filings" after rulings adverse to her. ***As to the Judge denying use of the "new mud passage", it's an unconscionable legal error because that was not even an issue,*** it was only in secret "filings" prior to rulings of March 17, 1986 which the Court did not let her go into at trial, but which the Court copied from after opposing counsel resubmitted "filings" with post trial brief! In addition to the foregoing

evidence, as shown at A79-80, A81 on March 20, 1985 Respondent Leslie Faul admitted under oath in answer to interrogatories:

> "The Highway Dept. *dug* the ditch, address your questions to them. You were promised a road to your property, not a cattle guard."

Lois F. Beard said under oath 4/85:

> *"I agreed to let you have use of my road and you have that."*

As shown by attached deeds and at A103 Leslie Faul did transfer and convey to petitioner his rights and interest to "that servitude of passage twenty (20) feet in width commencing on Louisiana Highway #343 and lying adjacent to the Southerly boundary of said Tr. three (3). . . . and running in an easterly direction along the southerly boundary of said Tract 3 a distance of 946.56 feet,"

Petitioner did not bring up the matter of drainage, "mud road" until Dec. 1983, because there was no drainage problem, etc. until Bearb destroyed the Faul Limestome Road and "covered-up" the natural drainages in December 1983. Petitioner's sister Eura F. Granger and brother Harvey Faul called her in Dec. of 1983 and informed her of the obstructions, floodings and destruction of the Faul Road.

Incredibly, the Judge states in his opinion that:

> "Plaintiff further insisted that, until the New Faul Road was constructed, the water had always run from Highway 343 to and along the Old Faul Road."

That statement is most incorrect as shown by Petitioner's testimony at Vol. 3, pg. 118-22:

> "open up ditches to drain towards Highway 343 and away from the Faul estate." pg. 121 L-15: ". . . . her man-made ditches would have to be opened up all the way; she just designed it to drain on me, it would have to be opened up to drain into Hwy 343 as it used to, and it would have to be kept open." Vol. 3, 121, 122, A162, A163. From Hwy to. . . is east and toward her farm. That is very wrong. Petitioner's and opposition's witness tes-

> tified water drains west and away from Benson property.

On 12/9/83 Bearb and Leslie Faul legally divided Tract 3 so that Leslie Faul could sell to petitioner and on March 5, 1984, Leslie Faul conveyed property with right-of-way to petitioner. A103. See A108. Eura F. Granger's signature under oath on March 2, 1984 that she would have front part of Tr. 4 as per her letter mailed on November 7, 1983, A85. Further, petitioner's trial exh. No. 12-A, Vol. 2, shown at A87, is a letter from Respondent Executor Leslie Faul himself to the family dated 12/1/83 which proves she was enclosed.

> "The final partition of our estate is being realized . . . the land picture looks like this — *Louella owning the lower portions of tracts 1, 3 & 4.* Leslie owning all of tract 5, Lester's heirs front of tract 1, Grace & Janell all of tract 2, Lois front of tract 3 and *Eura front of tract 4.* This was done by swaps and direct sales."

The back (or east parts) of Tracts 1, 3 & 4, petitioner's property was indeed enclosed at the time and Executor Faul admits that Eura F. Granger had the front part of Tract 4 (which he also admitted under oath again on March 20, 1985), thus verifying that petitioner had an enclosed estate. (Her trial Exh. #15). Petitioner had stipulated "*permanent use of the road as it was in 1982 and improvements would remain where they are.*" See Trial Exh. 52 and attachment re road, 12/1/83. They pocketed increased amount for improvements in 10/12/83 agreement, but would now deny road in same agreement and which agreement of 11/21/83 was supplement to. (A186, 187, # 52)

The letter of 6/13/84 was important, pg. 203, 205, Vol. 1 A128-130, because it shows "person who constructed the driveway" (which is obstruction Bearb put there in 1983) had agreed in 1984 to put a pipe under the driveway adequate to flow the water, and that the water drained west into Hwy. public ditch and not eastward. The Judge allowed it to be read *only* because it was hearsay, but when petitioner tried to question LeBlanc at pgs. 115, 116,

Vol. 4, A140, A141, the Judge would not allow her for which she noted her exception. Petitioner had objected to LeBlanc testifying as an expert because he was not listed, no report. He was a very prejudiced witness being defendant in (D.O.T.) case in State Court CV85-0234. LeBlanc lied. As shown at Vol. 4, 108, A137, he denied using chemicals in public ditch at Highway 343, but as shown at 216, Vol. 1, A144-5, Mr. Higgins, D.O.T. Asst. Chief Engineer, indicated that they had. In fact, LeBlanc had written:

> "the only chemical we used next to the Faul property, as well as next to all other properties along LA 343 was "oust".

That is outright violation in view of obstruction in public ditch and at pg. 100, Vol. 4, he admits "the water could go on roadway "go around" which is on petitioner's property and that no one would be hurt if culvert was installed." See *the testimony of Chemist Wilma Subra at Vol. 1,* pg. 188-89, 200, re such chemical. See A199-201, photos of Tr.4 toxics. Judge ignored her testimony. LeBlanc, pg. 106, admits the water "drains northerly. ." in public ditch but that it cannot go over Bearb's obstruction (it would go on petitioner) but he agreed with Langlinais that there is a big drop going north which is the natural drainage at that point. Note at pg. 117, LeBlanc admitted the water drains from the Faul estate into the public ditch at Hwy. 343. LeBlanc admitted he had never been on property until 1986 after 1983 alterations, and at pg. 102, he admits D.O.T. dug a deeper ditch in front of her Tr.4 next to Bearb's obstruction. A188, 24-ZZZ, 24-DD trial exhibits which show holes D.O.T. dug on each side of Bearb's property. Photo A192 shows Bear's obstruction in 1987 and one can tell it is not a dry ramp. Trial Exhs. 24-Y and 24-DD showed very well the 1983 dirt obstruction in public ditch and alteration of area but she cannot find her copy. Note the water does drain into the Hwy. ditch and it *all* used to drain there until 1983 changes. See A155 to A159, pgs. 110-115, Vol. 3, of petitioner's testimony.

Mr. S. J. Langlinais, petitioner's highly qualified civil engineer with advanced multiple degrees, testified ". . .from some of the evidence I have heard, the depositions I have read, have indicated

that there was a long-established history of the natural drainage to flow in this direction towards Hwy. 343." He testified at Vol. 1, pg. 143 A143, ". . .If it's been draining in that area, the natural drainage cannot be altered. . .that's my understanding of the law. I understand that's very explicit." At Vol. 3, pg. 112, A157, petitioner tried to testify re Code 694 re her enclosed estate at the time of partition agreements but she was not allowed to.

The eyewitnesses' depositions which Mr. Langlinais reviewed prior to trial were that of Messrs. Curley Leger and Lee Hanks, two life time neighbors who have known the Faul family and estate for many years and before Bearb destroyed the road and covered up the public and private drainages, both of whom were very objective. Both testified that prior to Bearb's actions in destroying the road, the Faul Rd. was a hard surface, elevated, gravel, later limestone road with drainage ditches on each side commencing in front of the house and draining into public ditch at Highway 343, that there was a cattleguard over the public ditch, and which ditch was opened. They testified that when the road was moved in 1983 the drainage was changed. Although their wording was different, their testimony amounted to the same thing as did that of Mark Faul, nephew to petitioner and respondents who also testified in petitioner's behalf. Mark Faul was the last resident on the farm and both he and Mr. Leger farmed the land. See pgs. 5, 6, 17, 18 of Mr. Leger's testimony at A145 to A146 and pgs. 20, 21, 31, 38, 39, 42 A150 to A153 for Mr. Hank's testimony, of Vol. 2, and pgs. 128, 180, 131, 135, 138, 145, A165 to A169, Vol. 3 for Mark Faul's.

Unlike the Judge said in opinion, Mr. Langlinais did not say there was only 1-½ acre of damages. Note at pg. 37, Vol. a, A142,he testified there's one isolated spot. . .and there were other areas that are shown that apparently are quite soggy as a result of the lack of drainage." Note at pg. 40 A142-43 he testified the "dairy barn is considerably higher than where the ponded area is, and the water would have a difficult time draining in that direction" That's the northeast ridges E.J. Faul would cut! Note at pg. 37, A142, he refers to his report and estimate the Judge did not allow A179, A180, A181 of Jan. 1986 attached in which he makes recommenda-

tions, notes obstructions, and warns of more damages with rains. Judge allowed him to read report in record but most of it is not there and we were denied the tapes or to list corrections, in spite of omissions, distortions. Petitioners and witnesses needed tapes for corrections. E. J. Faul's testimony that there are no changes since 1980 on the estate represents several untruths.

The Judge relied heavily on the testimony of E.J. Faul who is not an engineer and who indeed had, and has interest in her property and outcome of case as explained. Judge said E.J. Faul testified there was no culvert in the public ditch but as shown at pg. 218 A165, E.J. Faul testified he could not swear to that and that he remembered the cattle guard. See also pgs. 219, 227, 228, 249, 250 and 256. Vol. III, A170 to A175 of E.J. Faul's testimony. E.J. Faul had represented to the Western District that he only owned a few shares of Faul Energy, but later admitted under oath it was his company as shown at 218, A171. At A170, he said he had not been on the property, at 229 he testified, L-8, "he had not been back there in a long time" and then when he realized he could not testify as to changes unless he had made a viewing he testified he had been there once since 1980 with Leslie Faul. However at pg. 249. A173 later he again testified he had not seen the ditch in "maybe ten years" and would not know if ditch was obstructed. See A195 24-R and 24-T for Leslie Faul's obstructed ditches 1986 photos. Petitioner's evidence shows Exh. 25 at trial, (and Lois Bearb admitted under oath) that she installed three culverts on Faul estate in 1983 but note at pg. 265, A175 E.J. Faul was not aware of any culverts. E.J. was not informed to testify as to changes, nor as a drainage expert. he admitted he never took elevations and he has not lived on farm for 35 years. E.J. Faul's plans to cut a ditch on Tr.3 in front of petitioner's house to cover up their secret scheme to destroy the road where natural drainages were "covered-up" is inconsistent with the testimony of their engineer Robert Wolfe, petitioner's engineer Langlinais, Lois F. Bearb, Mark Faul, Lee Hanks and petitioner. At Vol. 4, pg. 12,

> Court: "And then Tr. 2 and 1 drain north, away from road?" (Private road in front of house)

> Wolfe: "That's correct. Mr. Langlinais shows a ridge right here. . ." Trial Exh. 25. "So everything on this side of the ridge will drain to the north; everything on this side of the ridge will drain to the south."

Note petitioner's Tr. 3 in front of the house where E.J. Faul would cut a north ditch, drains south (and then westward) according to both engineers, and as shown at her trial exhibit photos. A191, there are ridges on the north and there are ridges east A189, and even E.J. Faul admitted area around house is the highest. See Mark Faul's testimony at A163, pg. saying there were no ditches in that area. As shown by petitioner's testimony at pg. 110, A176, Vol. 3, where the Court let her read from Lois F. Bearb's deposition of 1986, Bearb admitted that petitioner drains on her. Note where petitioner testified that ". . .only since she moved the road and changed the drainages, she drains on me for 3½ yrs." At Vol. 4, pg. 13, L-12 Vincent Citizen the laborer she hired to destroy road when asked re the ditches "Did you cover them up?" Citizen: "I just went on and covered them up." (While petitioner and her husband were in La. trying case against State of La., their Va. home was broken into by the technical cops and her legal papers were all over the place, some missing, including testimony of Mr. Citizen, Mr. Wolfe and a copy of her Exh. 25 engineering plat. She is copying from prior brief re their testimony and cannot attach excerpts or plat, is this America? Other crimes noted.

Note at A182-185 petitioner picked up some of the elevations from Mr. Langlinais' plat in 1987 which she filed with post-trial brief and incorporated with Stream-flow from Am.Civil Engineering Practice. See Engineer Langlinais' report at A179-181 where he wrote "the dirt obstruction would have to be removed from public ditch", and at pg. 217, Vol. 4, A148-9. Engineer Joseph L. Benson warned of the "greater probability of overflow with the blockage. . .", he recalled the "ditch was open" in 1980, and at 218 he described the "new passage". Petitioner also testified public ditch was open with cattle guard.

The Judge is simply wrong and was mislead about the plaintiff's ditches being clogged up as the problem. As the evidence shows

it is the Respondent's ditches that are obstructed. Bearb's witness Citizen admitted to covering up old ditches alongside old Faul Rd. Photo A193 Petitioner and her eye witnesses testified ditches are no longer there and they drained into Hwy 343 ditch. Results can be seen at standing water A190, A189 photos on petitioner's property. Plaintiff's evidence proves Bearb put dirt obstruction in public ditch A192. Leslie Faul's south ditch and east-west ditches are obstructed — stated on engineering plat 25 which Judge had and is shown in trial exhibit photos. Also as shown at pg. 265, Vol. 3, L-6-10, A175, E.J. Faul testified there used to be a ditch "directly opposed to this one" (Leslie's south ditch) which is north on Bearb and Kidder's "property" which they have also covered up. (Kidder wants front part of undivided tract 2 owned with petitioner). There are only two ditches on petitioner's land. See 24-R, A195 petitioner's ditch on Tr.4 which she keeps open. Leslie's is obstructed. The other one is the part with the fence in it that is left of the old south east-west ditch alongside the old Faul Road on petitioner's property but it ends in front of house as is shown at A194, both photos entered at trial, and as shown at A193 of plaintiff's trial photo exhibit showing Bearb's "new road" and "new ditch", her "new south ditch" does not meet the old ditch, it's about 20' to the south and designed to drain on petitioner's best land since 1983. The old ditch is not used since Bearb moved the front part 20' south. See Mr. Langlinais report A179-181 for recommendations for corrections.

The respondents put on Robert Wolfe, a civil engineer, (who was allowed to testify over her objections) because she had subpoenaed him for a deposition and he did not appear, and they refused to enter survey. He did not pick up elevations at the low part of Tr.1. At pg. 42, L-22, Vol. 4, petitioner asked him to read his plan in record: "Ponding in Area A (Benson property front of house) on *attached survey* can be eliminated by excavating a small five to 15 foot section of ditch at points B and C to connect the existing road ditch."

Their plan was to cut on petitioner's property at B & C where there has never been a ditch to cover-up Bearb's actions and drain back the water westward the way it came since Bearb altered

drainages, but Mr. Wolfe would have it at midpoint going west, turn south into the South drain instead of all the way to Highway 343 as it used to. In addition to the fact that that will never work, as shown at A195, and entered at trial Leslie Faul keeps his south and east-west ditches obstructed so all the water would just stay on petitioner's property even if the plan could work. It cannot work for all the water. The south ditch is the old "existing ditch" the Judge mentions and Wolfe testified Leslie Faul's ditch was obstructed pg. 15, L-22, and testified his plan would work "as long as nothing obstructs the ditch". At pg. 164, Vol. 4, the Judge did not want to hear of Leslie Faul's obstructed ditches! As shown at pg. 250, Vol. 3, A__, E.J. Faul testified "You're not going to have any drainage" if Leslie Faul's ditches are obstructed. It's a "taking" of petitioner's property for public use and a travesty of justice.

REASONS WRIT SHOULD BE GRANTED

The Judge going beyond matters pleaded in denying petitioner any access whatsoever is unlawful error and prejudicial. The Petitioner's use of the new road to her property *was not an issue*, it was not pleaded, nor raised at trial, not put in evidence. Respondents admitted under oath in 1985 that she has access to new road.

The same is true as to respondents' agreements of October 10, 1983 and as to supplement to same of November 21, 1983, both of which petitioner accepted and met their increased financial consideration in agreement of October 12, 1983 in which they and concerned heirs agreed that she would have "full use of the road to her property" to induce her to sign the partition, after petitioner had expressly written to them that "she would have to have permanent use of the road as it is now (in 1982) and the improvements would remain where they are." The respondents at trial stipulated that petitioner owns these properties. Neither respondent got on the stand to deny the agreements which included full use of the road as it was before Bearb's actions nor did the defense discuss the contract rights as to use of any road with any of their other witnesses. *The evidence shows plaintiff's property was enclosed at*

the time and she took losses in view of agreements. The Judge denied the sound tapes which would have been crucial to make corrections of omissions, distortions, mistakes, etc.

The Judge relied on inconsistent misleading testimony which simply does not hold up. The Judge ignored all of petitioner's evidence, including that of her three highly educated experts, her engineering report and her eyewitnesses and photos and documents, and he did not allow crucial evidence. Judge refused to allow her highly qualified expert's report, D.O.T. violations.

There are unconscionable material errors in the Judge's opinion as documented herein which are very wrong.

The Judge copied from the defendants' secret (March 17, 1986) filing of "fact and law" with misrepresentations — given to him in 1986 and not made available to petitioner until 1987 after decisions adverse to her in subject and very related cases after she was tipped off by supplemental filing and asserted herself and obtained "18 unnumbered pages," attachments still not made available to her. Petitioner had listed their "filings" as an exhibit for trial to show she was not copied with documents and that they were lying, including re road. See pg. 10. Judge did not let her enter much of this evidence but after trial counsel resumbitted his "filings" of 1986 with post-trial brief and the Judge copied from it in his opinion of fact and law! The Judge ignored that misrepresentations were not even put in evidence and ignored petitioner's evidence, even after he was told they lied to him with proof available. As shown by excerpts enclosed from secret filing they were lying to try to get the property back after they tricked her into taking losses.

Court ignored fiduciary matter pleaded, enjoinment, and evidence supporting same, rules FRCP, ARCP including as to not being copied prior to rulings and re their "experts" and used the "Let it all in approach" ignoring rights. The Louisiana Courts were protecting their prior decisions adverse to her prior to secret misrepresentations.

ARGUMENT AND AUTHORITIES RELIED UPON

Civil Code Art. *694* established law that in a partition, if an estate becomes enclosed, the enclosed owner must be *given* the right to use the old passage, even if it is not the shortest route to the road, and even if it is not mentioned in the partition at all. Facts in the record show that plaintiff's estate was enclosed at the time of the partition.

In *Watson v. Scott*, App. 1975, 324 So.2d 508, writ refused 326 So.2d 378, appeal after remand 349 So.2d 982: "Where purchaser would not have purchased enclosed 40-acres of swampland useful mainly for hunting had he not been assured that upon payment of $8,000 to vendors he would have a right of passage over road which crossed vendors' land and which purchaser had been using in reaching the property, the *instrument* which was notarized on the same day that notary signed deed and which stated that the vendors dedicated right of way for road over their land *created in purchaser the right to use road, even though the purported dedication did not name a specific grantee* nor state considerations for the dedication."

Herbert v. Champagne, 1919, 144 La. *659*, 81 So. 217 established that "where owner of plantation is thereafter divided, and parts sold to different owners, they acquired such parts, unless it is otherwise stipulated, subject to disposition so made, and direction of original natural flow of drainage is immaterial." This law established that the drainage system in place prior to Bearb moving the road and covering up the drainages, destroying road, is controlling even if it had not been the natural drainage. Defendants admitted to both agreements, including under oath as shown herein, and facts show respondents did alter and obstruct natural drainage and ongoing. Petitioner's property is entrapped!

Also, in the case of *Brian v. Bowlus* and Civil Code Art. *695* it was established that the owner of the servient estate can *only* relocate the servitude as long as the relocation affords this petitioner the *same facility*, Civil Code Art. *748* is similar law in that

it states "the owner of the servient estate may do nothing tending to diminish or make more inconvenient the use of the servitude." In this case, even the Judge admitted in transcript that the "new road" was not comparable, and even the opposition admitted to floodings which were not there before 1983 obstructions and alterations of drainages when Bearb moved the road, and which road is the equivalence of the .60 of unaccounted for acreage. (See Photo of roads and plat. A197.

The evidence shows it is a matter of contracts and losses plaintiff took in view of their agreements which included full use of the road to her property.

It is well settled that a conventional agreement regarding the use of a servitude becomes the contract between the Parties. Consequently, Bearb had no right to relocate or change the road. Respondents agreed under oath that petitioner has access to the "new road" in 1985, and admitted their obligations to both agreements on December 10, 1984.

Ogden v. Gankston, La., 398 So.2d 1037, 1040, 1042. "At all times relevant to this litigation, the provisions of the Civil Code of *1870* were in effect. The code provides that servitudes may arise "from the natural situation of the places, from the obligations imposed by law, or from contract between respective owners." 695 (C.C. 654 Supp. 1977). *Clive W. Kerman,* 1923.

The primary Louisiana statutory authority pertaining to convention obligations, is now *C.C. Art. 1927.* "Unless the law prescribes a certain formality for the intended contract, offer and acceptance may be made orally, in writing, or by action or inaction that under the circumstances is clearly indicative of consent." In this case there was offer and acceptance. *Girouard v. Louviere,* 361 So.2d 1306, *Nelson v. Warren,* 157 So.2d 762, 764. R.S. 38:214; R.S. 38, 215.

5th and 14th in Board of Regents vs. Roth, 408 U.S. 564.

Civil Rights Restoration Act; Privacy and anti-discrimination laws (her Jewish husband had to sign off his community rights), *Boddie vs. Conn.*, 401 U.S. 371; also contract rights *Runyon vs. McCrary,* 427 U.S. 160 (1976) and the *14th, 5th Amendments.*

In *In Poireir v. Hodges*, D.C. Fla. 445 F.Supp. 838, a "right to be free from discriminatory private conspiracies, right to be free from being a victim of independent illegality."

"C.C. Art. 2045: "Interpretation of a contract is the determination of the common intent of the parties." (formerly C.C. Art. 1945). The defendants' intentions were to deceive since 1981 (secretly) because Lois F. Bearb admitted under oath that she and her two brothers had decided the Faul Road would be destroyed and moved at the meetings in 1981 while they mislead petitioner to believe she would have full use of it upon which she relied, and took losses and then they made her the victim of secret misrepresentations filed prior to rulings to cover-up with more fraud.

Since there was fraud involved, petitioner's position is that she is entitled to reformation. *La. App. 1963.* Where error is caused by fraud or misrepresentation victim is entitled to reformation of written contract to conform to actual agreement reached by parties. *Evangeline Refining Co. v. Nunez*, 1953 So.2d 886. *Sweet v. Riter Finance Co.*, 263 F.Supp. 540, 543 Va. *American Guaranty Co. v. Sunset Realty & Painting Co.*, 1945, 208 La., 772, 23 So.2d 409 ". . . *relation of confidence or inequality of knowledge* . . ." "legally obligated to tell the whole truth. . . she lives in Va. *Rodrigues v. Prevost*, 1912, 129 La. 940, 57 So. 276. *C.C. Art. 1986 Mistake and fraud.* La. App. 3 Circ. 1986. Reformation can be invoked to conform written instrument to original intent of parties, where there has been fraud or error — *Tate v. Charles Aguillard Ins. and Real Estate, Inc.*, 494 So.2d 1240, writ granted 498 So.2d 745. *La. App. 2 Circ. 1986.* Even if no mutual error . . . reformation of deed is justified based on fraud, misrepresentation or inequitable conduct . . ." In this case, road, missing acreage .60 (equivalent of "new passage") is a fraud, descrepancies in survey, plus untruths in secret filings. *Clay v. Butler, et al.*, Sp. Ct. of Appeals of Va., June 15, 1922, pg. 880. *La. App. 1969. Pilcher v. Paulk*, 228 So.2d 663. In this case all heirs signed warranty deed for improvements. Word immovable improvements is correct on first page and word movable twice on second page is wrong. In1985, Leslie Faul, executor said

under oath it is error which can be corrected. *La. App. 1963 Mortgagee's* assignee entitled to reformation of mortgage when faulty and inaccurate as to first portion but correct in other, *Shelley v. Kraemer*, 334 U.S. (1948). *Goss v. Lopez*, 419 U.S. 565; 42 L.Ed.2d 725; 95 S.Ct. 729 (1975).

Walberg vs. Israel, 766 F.2d 1071, cert. denied, 106 S.C. 546, 7th Cir. 1985, pg. 1076; *Strickland vs. Washington*, 104 S.C. 2052 - 1984; *U.S. vs. Candelaria - Gonzalez*, 547 2nd 291, 5th Cir., 1977, p. 297; *Childs vs. Duckworth*, 705, F.2d 915, Ind. Ct. Ap. 1983; *Traguth vs. Zuck*, 710 F.2d 90 2nd Cir. 1983.

Re experts, etc., *Dyas v. U.S.*, 376 A.2d 831 (D.C.App. 1977), cert. denied, 434 U.S. 973 *Gant v. U.S.*, 518 A.2d 103, at p. 110 Fn. #16 D.C. App. 1986; also *Air Crash Disaster at New Orleans, La.*, 795 F.2d 1230 (5th Cir. 1986) Court critically warned of the "Let it all in" philosophy, and to be wary of an expert being nothing more than an advocate of the policy. 702, Rule 403.

CONCLUSION

For the reasons set forth above, and to prevent ongoing unconscionable abuses and injustices, petitioner respectfully prays that a writ of certiorari be granted to review the rulings, decisions, opinion and judgment of the lower courts.

LOUELLA F. BENSON, *pro se*
6432 Montrose Street
Alexandria, Va. 22312
(703) 256-7595

September 9, 1988

CERTIFICATE OF SERVICE

I certify that two copies of the foregoing have been mailed to Charles Brandt, Esq., 300 B Stewart St., Lafayette, La. 70501, on this the 9th day of Septemer 1988, via certified mail.

LOUELLA F. BENSON, *pro se*
6432 Montrose Street
Alexandria, Va. 22312
(703) 256-7595

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

GILBERT F. GANUCHEAU
CLERK

TEL: 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

August 5, 1988

Ms. Louella F. Benson
6432 Montrose St.
Alexandria, VA 22312

No. 87-4692 - Benson -vs- Bearb, et al.
USDC # CV 84 2541 "O"

MANDATE STAYED TO AND INCLUDING
SEPTEMBER 5, 1988

This Court has this day granted a stay of the issuance of the mandate to the date as shown above. If during the period of the stay there is filed with this office a notice from the Clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari, the mandate shall issue immediately under Rule 41, FRAP.

Under revised Rule 19.1 of the Supreme Court, effective June 30, 1980, a request to certify the record prior to action by the Supreme Court on the petition for certiorari should *not* be made as a matter of course but only when the record is deemed essential to a proper understanding of the case by that court.

A copy of the opinion, judgment, or Rule 47.6 Decision, and denial of reheairng are still required by the Supreme Court to be incorproated as an appendix to your petition. Enclosed

are copies of the said documents which have been entered in this cause.

Very truly yours,

GILBERT F. GANUCHEAU,
Clerk

By: /s/ Eileen C. Boudoin
Deputy Clerk

Enclosures
cc: Mr. Charles Brandt

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-4692

U.S. COURT OF APPEALS
FILED
JUL 22 1988
GILBERT F. GANUCHEAU
CLERK

LOUELLA F. BENSON,
Plaintiff-Appellant,

versus

LOIS PAUL BEARB, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

ON PETITION FOR REHEARING

(July 22, 1988)

Before GEE, GARWOOD and JONES, Circuit Judges.
PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/s/ Edith H. Hones
United States Circuit Judge

CLERK'S NOTE:
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

RHG-4

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

87-4692
Summary Calendar

LOUELLA F. BENSON,

Plaintiff-Appellant,

versus

LOIS F. BEARB and LESLIE FAUL,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(CV—84-2541-O

(June 28, 1988)

Before GEE, GARWOOD and JONES, Circuit Judges.

PER CURIAM:*

AFFIRMED on the basis of the district court's findings and opinion. See Fifth Circuit Local Rule 47.6.

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*Local Rule 47.5 provides: "the publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-4692

LOUELLA F. BENSON,

Plaintiff-Appellant,

versus

LOIS FAUL BEARB,
ET AL.,

Defendants-Appellees.

Appeals from the United States District for the
Western District of Louisina

Before GEE, GARWOOD and JONES, Circuit Judges.

BY THE COURT:

IT ORDERED that the motion of appellant to obtain tapes and make transcript corrections is denied as unnecessary.

U.S. COURT OF APPEALS
FILED
JUN 30 1988
GILBERT F. GANUCHEAU
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-4692

LOUELLA F. BENSON,

Plaintiff-Appellant,

versus

LOIS PAUL BEARB,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Louisiana

ORDER:

IT IS ORDERED that appellant's motion for leave to file supplemental brief is granted.

/s/ Edith H. Jones
United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 86-4738

LOUELLA F. BENSON,

Plaintiff-Appellant,

versus

LOIS FAUL BEARB &
LESLIE FAUL,

Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Louisiana

ORDER:

IT IS ORDERED tht appellant's motion for leave to file motion to inform the Court is denied.

/s/ [Illegible]
CHIEF JUDGE

U.S. COURT OF APPEALS
FILED
FEB 17 1987
GILBERT F. GANUCHEAU
CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

LOUELLA F. BENSON

VS. CIVIL ACTION NUMBER 84-2541

LOIS FAUL BEARB, ET AL SECTION O - JUDGE SHAW

PLAINTIFF,
IN PROPER PERSON: LOUELLA F. BENSON
6432 Montrose Street
Alexandria, Virginia 22312

ATTORNEY FOR DEFENDANTS: CHARLES BRANDT
300 B Stewart Street
Lafayette, Louisiana 70501

OPINION

JOHN M. SHAW
UNITED STAES DISTRICT JUDGE

OPINION

I. Findings of Fact.

This is a claim by plaintiff, Louella F. Benson, against her brother and sister, Leslie Faul and Lois Faul Bearb, wherein plaintiff seeks damages as a result of the defendants' alleged destruction of a road or driveway (''the Old Faul Road'') leading from Louisiana State Highway 343 to property now own-

ed by plaintiff. Plaintiff also claims that defendants granted her a permanent right of access to this road and to the road which replaced the Old Faul Road ("the New Faul Road").

Plaintiff's father, J.B. Faul, died in 1980. The estate consisted of a track of land of approximately 46.85 acres, located in St. Landry Parish, Louisiana. J.B. Faul's issue consisted of ten children, all of whom were direct descendants.

Leslie Faul was the executor of the will, who served without compensation for the entire period that the estate was open. The final proposal divided the entire tract of the land into five narrow strips of land, each approximately 220 feet wide by 1,930 feet long, consisting of approximately 9.37 acres each. The most hotly contested issue amongst the heirs was the disposition of Tract 3, which Leslie Faul and Lois B. Faul eventually drew in the drawing held among the heirs. Upon this tract were located the house, the barn, and the dairy. Leading up to the house was a shell and limestone drive. This road ran from Highway 343 to the house, with the southernmost edge of the road approximately 25 feet from the boundary of Tracts 3 and 4. At some point in the negotiations, it was proposed that the road be moved to the boundary line between Tracts 3 and 4, so as not to leave a 20 or 25-foot section of unusable land running 1,700 feet. Lois Bearb eventually moved the road so as to accomplish this objective.

In a letter dated October 12, 1983, and actually sent to plaintiff on October 31, 1983, heirs Leslie Faul, Lois F. Bearb, Grace Kidder, Janell Faul Lorrain and Eura M. Granger proposed certain concessions to plaintiff, in order to induce her to sign the partition agreement. They proposed to let her purchase the house and the improvements at the appraised price. The heirs further agreed that plaintiff would have full use of the road to her property.

On November 7, 1983, plaintiff wrote to Leslie Faul, rejecting the various proposals that Leslie Faul and the other heirs had submitted. On November 26, 1983, plaintiff signed the partition, and then wrote a letter to Leslie Faul, stating that she accepted his November 21, 1983 proposal to purchase the back section of Tract 3, where the house and the improvements were located. This proposal did not include a right to use the road to the house.

On December 9, 1983, in order to transfer an undivided interest in Tract 3 to plaintiff, Leslie Faul entered into an Act of Partition with his co-owner, Lois Bearb, wherein they divided Tract 3. As part of the Act of Partition, Lois Bearb gave to Leslie Faul a servitude of passage 20 feet in width, commencing on Highway 343, adjacent to the southern boundary of Tract 3 and running in an easterly direction along the southern boundary of Tract 3, for a distance of 946 feet. It was stipulated that "it shall be the duty of Faul, or his successor in title to said property, to maintain this right of way in good condition with shell, gravel or similar material at all times, and [Lois] Bearb reserves the right for herself, her heirs or successors to use this right-of-way." The contract did not grant Louella Benson access to this road.

On March 5, 1983, Leslie Faul signed a warranty deed, transferring title to the eastern portion of Tract 3 from himself to Louella Benson. In this Act of Sale, Leslie Faul transferred and conveyed to Louella Benson all his right, title, and interest in the passage created by his partition of Tract 3 with Lois Bearb. Nevertheless, the deed did not give plaintiff access to the road from its intersection with Highway 343 until it intersected with plaintiff's portion of Tract 3. On September 5, 1983, Louella Benson signed the Act of Sale and recorded the sale in the St. Landry Parish Courthouse.

On December 10, 1983, plaintiff wrote to Leslie Faul, stating that she wanted access to the complete road. On December 12, 1983, plaintiff again wrote to Leslie Faul, stating that she did not want to "get put behind a mud road." She also wrote that Leslie Faul was responsible for maintaining the drainage ditches so that the water would not flow on plaintiff's property.

Plaintiff subsequently complained to Leslie Faul and Lois Bearb that Ms. Bearb's destruction of the Old Faul Road was directly responsible for water that apparently was collecting on plaintiff's land. Plaintiff alleged that the New Faul Road blocked the public drainage ditches at the intersection of the New Faul Road and Highway 343, and that this blockage had not been present when the Old Faul Road was in existence. Plaintiff further insisted that, until the New Faul Road was constructed, the water had always run from Highway 343 to and along the Old Faul Road.

II. Conclusions of Law.

Plaintiff has asserted that she has a right of access to the New Faul Road, and that, as a result of Lois Bearb's having moved the Old Faul Road, plaintiff's land has been flooded. The court will address these issues respectively.

Subsequent to the partition agreement between Lois Bearb and Leslie Faul, plaintiff obtained title to Lot 4, which lies adjacent to the rear of Lot 3, and traverses the entire tract to the front of the property and the public road. Thus, when plaintiff obtained the rear portion of Tract 3, she did not obtain a land locked estate surrounded by the lands of others because her ownership of an adjacent tract permits her to have access to the nearest public roadway without traversing the lands of her neighbors. A servitude of passage may only be imposed upon an "enclosed" estate. LSA-C.C. art. 689. Before a ser-

vitude of passage is owed to another estate, it must first be shown that the dominant estate is enclosed. *Morgan v. Culpepper,* 324 So.2d 598 (La.App. 2d Cir. 1975). Thus, because plaintiff's property is not an enclosed estate, she is not entitled to a right of passage across defendants' land. *Fusilier v. Fourerat,* 359 So.2d 1060 (La.App. 2d Cir. 1975). Moreover, because the ultimate objective of the law in its considerations of the free use of property is to relieve servient estates of the onerous burden of use by others, it is apparent that plaintiff's position that she has access to New Faul Road is not meritorious.

A separate and independent reason why plaintiff has no access to the New Faul Road is that there was no agreement between the parties specifying that plaintiff had such a right. The December 9, 1983 Act of Partition dividing Tract 3 between Leslie Faul and Lois Bearb clearly stated that Ms. Bearb granted to Mr. Faul a servitude along the New Faul Road. The partition did not grant plaintiff such a right. In addition, the March 5, 1983 warranty deed transferring title in the eastern portion of Tract 3 from himself to plaintiff only gave plaintiff access to the road on her portion of Tract 3. The law clearly states that apparent servitudes may only be acquired by title, by destination of the owner, or by acquisitive prescription. LSA-C.C. art. 739. Apparent servitudes are perceivable by exterior signs, works, or constructions, such as a roadway. LSA—C.C. art. 707. Clearly, in this case, plaintiff has not acquired access to the New Faul Road by title, by destination of the owner, or by acquisitive prescription. No contract or Act of Sale exists wherein plaintiff has been granted a right of access to the road. Neither Leslie Faul nor Lois Bearb has granted plaintiff access due to destination, because plaintiff now has her own access to the public roads. In addition, because she has not had peaceable and uninterrupted possession of a right of access to the New Faul Road for a period of thirty

years, plaintiff has not acquired access to the road by acquisitive prescription. LSA-C.C. art. 742.

As to the drainage issue, it was clearly established at trial that the maintenance of the drainage ditches running along Highway 343 was the responsibility of the State of Louisiana, and not the responsibility of the defendants. The testimony established that Lois Bearb did not place an obstruction in the public ditch. Rather, a dry ramp was constructed in order to replace the dry ramp which had previously existed before the old driveway had been moved. E.J. Faul, who had no pecuniary interest in the outcome of the case, testified that there was no culvert in the highway ditch on the Old Faul Road. Moreover, John LeBlanc, with the Louisiana Department of Transportation and Development, testified that there was no need for a culvert and that it was unlikely that there had ever been one in place. In addition, other witnesses confirmed that the defendants had not obstructed the public ditch.

The witnesses also clearly established that, rather than drainage from Highway 343 along the Old Faul Road, the water had always drained westward along the southern part of Tract 3, and then southward along the "old existing ditch." Moreover, the slope of the land above Tract 3 caused the water to flow to the northeast. In addition, the water could not have flown from Highway 343 along the New Faul Road because the elevation along the New Faul Road as it extends from Highway 343 rises until approximately the middle of the road, at which point it slopes downard.

Furthermore, the testimony at trial established that it was the plaintiff's failure to unclog the old existing drainage ditch, rather than the defendants' moving of the Old Faul Road, that resulted in the standing water on plaintiff's property. Thus, the natural drainages on the tracts adequately drained the water.

In addition, plaintiff's own expert witnesss testified that the total amount of acreage which accumulated excess water was only one-half to one acre, lending credence to the testimony that plaintiff had caused the excess water to deposit on her land. Were defendants to have blocked the drainage as plaintiff had argued, it is unlikely that so little of plaintiff's property would accumulate excess water, and unlikely that the water would have been widely dispersed over a total of one-half to one acre.

III. Conclusion.

The evidence clearly establishes that plaintiff Louella Benson has no contractual right of access along defendants' New Faul Road and that plaintiff's land has not been flooded as a result of the defendants' construction of the New Faul Road.

Opelousas, Louisiana, Septemer 16, 1987.

/s/John M. Shaw
JOHN M. SHAW
UNITED STATES DISTRICT JUDGE

COPY SENT
DATE: 9-17-87
BY TM
TO: Benson
Brandt

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
SEP 16 1987
ROBER TH. SHEMWELL, CLERK
BY /s/ CB
DEPUTY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA

Civil Action, File Number _____

LOUELLA F. BENSON, Plaintiff,	*	
V.	*	Complaint
LOIS FAUL BEARB,	*	CV84-2541
LESLIE FAUL, and	*	SEC O
LOUISIANA DEPARTMENT OF	*	
TRANSPORTATION AND DEVELOPMENT	*	

****

JURISDICTION

1. Plaintiff is a citizen of the State of Virginia and defendants are citizens of the State of Louisiana. The matter is controversy exceeds, exclusive interest and costs, the sum of ten thousand dollars.

COMPLAINT

FIRST CAUSE OF ACTION

2. Petitioner is the owner of certain immovable properties, hereinafter described with particularity, lying and being situated in Section 23, Township 8 South, Range 3 East, St. Landry Parish, Louisiana, which properties were received by her in the partition of properties formerly belonging to the John Baptiste Faul and Emma Leger Faul Estates, recorded November 30, 1983, under Act No. 681949, in CBX-24 at Page 260, Recorder's Office, St. Landry Parish, Louisiana; and by various acts of acquisition and partition from some of the remaining owners of said estate property, of which the following tracts are pertinent to this action, as they are described in said partition, to-wit:

a. Tract 4, containing 9.37 acres, in Section 23, Township 8 South, Range 3 East, St. Landry Parish, Louisiana, said tract having a front of 211.5 feet on Louisiana Highway #343 and running back in an Easterly direction 1912.6 feet on its Northern boundary liner and 1949.1 feet on its Southern boundary line, and with its rear on Easterly boundary line being 214.5 feet, said property being more fully shown on plat attached to the Act of Parition hereinabove mentioned.

b. Tract Three (3) of the Partition of the JOHN BAPTISTE FAUL and EMMA LEDGER FAUL property in Section 23, Township 8 South, Range 3 East, as per Plat of Survey attached to Act of Partition recorded on November 30, 1983, as Original Act No. 681949 in C.B. X-24, page 260, Recorder's Office, St. Landry Parish, Louisiana, LESS AND EXCEPT the, West 946.56 of said Tract 3, the property herein conveyed being also described as follows, to wit:

> Commencing at the Southeast (SE) Corner of Tract Three (3) of the Partition of the JOHN BAPTISTE FAUL and EMMA LEGER FAUL property in Section 23, Township 8 South, Range 3 East, as reflected by Plat of Survey attached to Act of Partition recorded on November 30, 1983, as Original Act No. 681949 in C.B. X-24, page 260, Recorder's Office, St. Landry Parish, Louisiana; from said point of commencement, go South 89° 54′ 30″ West a distance of 966.04 feet, thence go North 0° 04′ East a distance of 215.6 feet, more or less, to the North line of said Lot 3, thence go North 89° 54′ 30″ East a distance of 928.84 feet, more or less, to the Northeast (NE) Corner of said Tract 3, thence go South 9° 43′

40'' East a distance of 218.7 feet, more or less, to the point of commencement.

3. The estate property was subdivided into five tracts, numbered 1 through 5, a plat of which subdivision was attached to and made part of said Act of Partition, which Plat is made a part hereof by reference.

4. Plaintiff, Louella Faul Benson, in executing said act of partition, relief upon the agreement of Leslie Faul and Lois Faul Bearb (together with that of other heirs of the Decedent's Estate), that Petitioner would be allowed to purchase from the heirs, the house and improvements, and to acquire the land where the house and most of the improvements were situated and ''that she will have full use of the road to her property,'' which agreement pertained to a shelled road, in existence and maintained many years prior to the demise of the Decedents (known as ''Faul Road''), also served as the means of drainage of substantial portions of Tract 3 onto the highway ditch situated along Louisiana Highway 343, through roadside ditches along Faul Road.

5. By means conveyances, i.e., a partition between Leslie Faul and Lois Faul Bearb and a sale from Leslie Faul to Petitioner, Louella Faul Benson, Petitioner purchased the east 4.685 acres of Tract 3, upon which tract most of the improvements belonging to the Decedents were situated. Leslie Faul failed to reserve full access to the Faul Road in his partition with Lois R. Bearb despite their agreement that Plaintiff would have full access thereto. Leslie Faul failed to inform Plaintiff of the destruction of Faul Road or of the drainage problems being created, with the construction of a new right of wray, all as hereafter alleged.

6. Defendant, Lois Faul Bearb, who received the west portion of Tract 3 upon which Faul Road was situated, has

destroyed the old roadway and roadside ditches which existed, and has attempted to replace same with a twenty-foot servitude of passage in a different location. She has removed the cattle guard on the old roadway, obstructed the highway ditch, placed a culvert in the area of the old roadway thereby obstructing the drainage which once existed. She has also destroyed the access of Petitioner to her property on a hard-surfaced road.

7. Said actions and breach of contract on the part of Defendants, have damaged and will damage Petitioner, Louella Faul Benson, in the following particulars:

a. By attempting to substitute a new servitude of passage without proper roadside ditches, without maintaining proper drainage, so as to cause flooding to the properties owned by Petitioner, Louella Faul Benson.

b. By substituting an unimproved, unshelled or otherwise hard-surfaced right-of-way for a fully developed shelled road, as access to her properties.

c. By said actions, thereby diminishing the value of Petitioner's property.

8. In addition, Defendant, Lois Faul Bearb, obstructed the drainage ditch lying along Louisiana Highway 3443, to the detriment of the properties of Louella Faul Benson.

9. This Court should enforce the agrements between Petitioner, Louella Faul Benson and Defendants, Lois Faul Bearb and Leslie Faul, with respect to the right of passage previously known as Faul Road, and should enjoin Defendant, Lois Faul Bearb, from any further destruction, interference, drainage or access obstruction, or any other action whatsoever causing damage to or interference with the full use of Faul Road

for both access and drainage purposes, as agreed between said Parties, alternatively, Defendant, Lois Faul Bearb should be enjoined and prohibited from obstructing both the means of access and servitudes of drainage in existence with respect to the properties owned by Petitioner.

10. Because of the actions of Defendant, Lois Faul Bearb, in scraping the shell and other hardsurfacing material from the roadway previously known as Faul Road, and in obstructing the drainage which existed along either side of said road, and in otherwise interfering with the full use and benefit of Faul Road or alternatively the newly constructed roadway, Petitioner, Louella Faul Benson has been damaged in the sum of $50,000.00 including the costs of repair and replacement of hardsurfacing materials and the cost of restoration of drainage to properties owned by Petitioner, engineering and surveying fees, costs and expenses of travel for the purpose of correcting the breaches of the contract hereinabove set forth, worry, harassment, humiliation, loss of income, and other damages to be specified upon the trial of this action; fear of physical harm upon entering her property and of threats of being deprived of the future use thereof.

SECOND CAUSE OF ACTION

11. The house and other improvements, together with the yard fence of the Decedents, John Baptiste Faul and Emma Leger Faul, were believed by Petitioner after being so informed by defendants, to be partially situated upon the eastern portion of Tract 3, purchased by Petitioner from Leslie Faul; and partially upon the eastern portion of both Tract 2 and Tract 4. Likewise Petitioner believes that an error has been made in apportioning the acreage in Tracts 1 through 5. Petitioner desires to survey the entirety of said tracts in order to ascertain the above and other matters.

12. Petitioner attempted to obtain copies of all surveys made from defendants, and was denied. Petitioner then attempted to make a survey which would show her with particularity the portion or portions of said improvements situated upon each tract, and the acreage contained by each tract. Defendant Leslie Faul threatened to do bodily harm to Plaintiff should she attempt a survey of the estate.

13. On or about Feburary 14, 1984, Defendant Lois Faul Bearb went upon the estate properties, told the surveyors there engaged by Petitioner that they were trespassing, and ordered them to remove themselves immediately from the premises, thereby preventing Petitioner from surveying her properties and improvements.

14. The actions of Defendants, in preventing or attempting to prevent Petitioner from surveying her properties have caused Petitioner damages, which are itemized as follows:

a. Surveyor's fees and charges, costs of travel, loss of income, and related damages. $10,000.00

b. Humiliation, embarrassment, harassment, fear, threats and related damages. $75,000.00

The actions of Defendant Leslie Faul, in his fiduciary capacity as administrator, or alternatively ad hoc administrator of the successions of the decedents, in his bad faith, or alternatively negligent and careless dealings with the interests of Petitioner in the premises, have likewise caused Petitioner damages for the items listed above, and for loss of use and diminution of the value of her properties in the sum of $75,000.00

THIRD CAUSE OF ACTION

15. Leslie Faul is a person of full age, a resident of and domiciled in Calcasieu Parish, Lousiana, who is or was the

testamentary executor of the successions of the said Decedents, or alternatively pruported to act as such with respect to his dealings with Petitioner.

16. After agreeing to sell, but before executing an act of sale of the improvements which previously belonged to the Decedents, to and in favor of Petitioner, Defendant, Leslie Faul, demanded payment from Louella Faul Benson the sum of Eighteen Thousand, Eight Hundred Dollars ($18,800.00), subject to a credit of Three Thousand Dollars ($3,000.00) which was duly applied, and stated to her that she would receive her pro rata portion, as an heir of the estate, of the net proceeds of the sale, after the deduction of certain expenses, which were later itemized. In reliance upon said agreement, Petitioner forwarded the funds demanded by the executor, Defendant Leslie Faul, who then caused an instrument titled "Warranty Deed" to be executed by the remaining heirs of the Decedents with the exception of Harvey Faul, in favor of Petitioner, which on page 2. thereof, referred to the improvements which were situated upon properties received, purchased by petitioner, all as hereinabove described, as "items of movable property." Petitioner has requested the correction of said instrument, to read "immovable property,' to no avail.

17. Petitioner avers that the deed should be reformed to reflect that the nature of the improvements sold to Petitioner were immovable under the law of the State of Louisiana, and to reform said deed to reflect that there was no intention between the parties to change or alter the nature of the immovable improvements, nor to imply that the same need be removed from their respective locations; and to read "immovable properties" instead of "movable properties," in order to guarantee good, valid and merchantable title to said immovable improvements.

18. Defendant, Leslie Faul, should be ordered to pay to Petitioner the additional sum of Nine Hundred Ninety-Nine Dollars and Ten Cents ($999,10), as agreed between the parties, as a condition of the sale of said improvements by the heirs of the Decedents to Petitioner, forthwith.

19. Plaintiff requested and made a demand upon the Department of Transportation and Development for Louisiana, to remove the obstructions placed upon the highway ditch of Louisiana Highway 343, and to remove the deep excavation and restore the ditch to the condition as before Lois Faul Bearb obstructed same, and to maintain the drainage thereon, in a manner not to flow any water on the properties of Petitioner, all as hereinabove alleged: that the duty of the Department of Transporation and Development, through its Secretary and other offices, Robert G. Graves or his subordinates, to maintain adequate drainage along said highway, is ministerial in nature, and the Secretary should be mandated to remove the obstructions placed thereon by Defendant, Lois Faul Bearb, and all other persons who may have obstructed same, and to restore adequate drainage from Petitioner's properties, which said defendant has failed and refused to do, wich failure has dimnished the value of Plaintiff's property or alternatively, has damaged Plaintiff's property in the sum of $100,000.00, past, present and future.

WHEREFORE, Plaintiff demands judgment herein as follows:

1. Against Defendant, Lois Faul Bearb, enjoining and prohibiting said Defendant from any further destruction, interference, drainage or access obstruction, to the use of Plaintiff of the means of access to the east portion of Tract 3, and Plaintiff's other properties, by means of Faul Road; together with the sum of Fifty Thousand Dollars in damages;

2. Against Defendants, Leslie Faul and Lois Faul Bearb jointly and in solido, in the sum of Eigthy-Five Thousand Dollars; permanently enjoining defendants from any further interference whatsoever with Plaintiff, Louella Faul Benson, or with her property;

3. Against Defendant, Leslie Faul, in the sum of Seventy-Five Thousand, Nine Hundred Ninety-Nine and No/100 Dollars, reforming the "Warranty Deed" which purports to transfer ownership of the immovable improvements formerly situated upon the Faul Estate to Plaintiff, Louella Faul Benson, so as to reflect that there is no intention between the parties to change or alter the nature of said immovable improvements, nor to imply that the same need be removed from their respective locations; substituting the words "immovable" for "movable" properties therein;

4. And against the Lousiana Department of Transportation and Development, by and through its Secretary, Robert G. Graves, mandating said Department to remove all obstructions to the Highway drainage system, or connections thereto, adjacent to Tract 3 of the Partition hereinabove described; to restore the deep excavation made in front of Tract 4, and to maintain adequate drainage along said Highway to prevent the flow of any water onto Petitioner's properties; enjoining said defendant from flowing drainage water onto Petitioner's properties, including any overflow from highway ditches; alternatively in the sum of One Hundred Thousand Dollars;

And for interest and costs of these proceedings.

Signed: Toxie L. Bush, Jr.
Toxie L. Bush, Jr.
Attorney for Petitioner
P.O. Box 506
Abbeville, Louisiana 70510
893-1703

VERIFICATION

STATE OF LOUISIANA
PARISH OF LAFAYETTE:

BEFORE ME, the undersigned, a Notary Public duly commissioned and qualified in and for the State and Parish aforesaid, therein residing, and the presence of the undersigned competent witnesses, personally came and appeared: Louella Faul Benson, who upon being duly sworn, deposed: that she is the Plaintiff in the above titled and numbered petition, which she has read; that the allegations of fact therein contained are true and correct.

/s/ Louella F. Benson
Louella Faul Benson

SWORN TO AND SUBSCRIED BEFORE ME this 18 day of September 1984.

/s/ Toxie L. Bush, Jr.
Toxie L.Bush, Jr.
Attorney-Notary Public

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
SEP 21 1984
ROBERT H. SHEMWELL, CLERK
BY /s/ SW
DEPUTY

The title in this case does locate the location of the servitude. The title further requires the owner of the dominant estate to make changs at his expense. Even with this not so, the Civil Code requires the owner of dominant estate to maintain and preserve the servitude. In interpreting this servitude as to its existence, extent or manner of exercise, the Civil Code provides that any doubts are to be resolved in favor of the servient estate, e.g., in favor of the defendants.

CHARLES BRANDT
Attorney for Defendants
300 B Stewart Street
Lafayette, Louisiana 70501
(318) 237-7171

plaintiff not copied with 18 pages of distortions and untruths. She was left with no road. See A__, A__, for misrepresentations filed with above.

THE COURT: Be seated.

MRS. BENSON: Is it okay if the witnesses come at the table?

THE COURT: Well, is there a request that the witnesses be placed under the rule or is it all right if they remain in the courtroom?

MR. BRANDT: I have no objection to them remaining in court, Your Honor.

THE COURT: That will be fine.

I think before we get started, there's a motion for reconsideration, I believe, to transfer the case to the State Court?

MRS. BENSON: Yes, Your Honor. That was my motion.

THE COURT: I'll have to deny that. I know of no procedure for a case that is originally brought in Federal Court that the Federal Court has the power to transfer it to a State Court. It wasn't filed there or anything else, and that motion will have to be denied, so we'll have to proceed.

MRS. BENSON: I understand, Your Honor. The reason I had brought it was because of the misleasding misrepresentations that they had made to the Court in March of 1986 in both cases without copying me and which bear on both cases. That's why I had brought it up, but * * *

---

(318) 237-7171

CHARLES BRANDT
Attorney at Law
300-B Stewart Street
Lafayette, Louisiana 70501

Of Counsel to:
Glenn Armentor, Ltd.
(A Professional Law Corp.)

April 13, 1988

The Honorable Gilbert F. Ganucheau, Clerk
United States Court of Apperals
Fifth Circuit
600 Camp Street
New Orleans, LA 70130

Re: Louella F. Benson v.
Lois F. Bearb and Leslie Faul
No: 87-4692

Dear Sir:

Enclosed please find a copy of defendants' brief in the above case. A B Letter Service, Inc. will send you a bound copy as soon as they have completed printing and binding same.

With best wishes, I am,

Very truly yours,

/s/ CB
CHARLES BRANDT

CB:mrm

Enclosure (1)
1. Copy of brief
cc: Louella F. Benson

Glen Ally, PhD., Malcomb Bearb, Leslie Faul, Ewell J. Faul, Faul Energy Co., Nellie C. Faul, Melody Faul, Izena Grace Kidder, Melvin Kidder and William Gibson.

Benson mentions throughout her brief a "secret pleading" and "secret misrepresentations" that were made by undersigned counsel. ***This allegation resulted due to undersigned counsel's apparent failure to copy Benson with the pre-trial memorandum which was sent to Judge Shaw and filed in the record.*** When undersigned counsel filed a supplemental and amending pre-trial motion, he, of course, copied Benson with same, resulting in a frenzy of activity on her part, accusing undersigned counsel of misrepresentations, lies, deceits and distortions.

Benson refers in her brief, particularly in the statement for oral argument that it was this failure of her being copied with the pre-trial memorandum which resulted in "the Judge being biased and negative towards appellant, and showed a remarkable restraint towards Benson, tending almost to stoicism. Undersigned counsel would also point out that * * *

/s/Charles Brandt
Counsel for Defendants

To all members of the family:

I, Ewell J. Faul, plan to call for a public auction of the property that we jointly own in St. Landry Parish no later than November 15, 1981, if a unanimous decision cannot be reached by all parties as of that date.

I plan to be at that auction and to purchase this property in my name and I will allow no one to back in for their share unless I so desire.

I also plan for this sale to include all mineral rights attributable to the property and whoever is successful in purchasing the property will be in total control of its disposition.

/s/ Ewell J. Faul
Ewell J. Faul

Witnessed by:
Nellie Champagne Faul

October 23, 1981

Dear Louella,

It seems that we have two choices now concerning the property.

We proceed as agreed by 9* of us at the Oct. 10 meeting or we have a public auction.

Your ideas were presented to the group. They were not accepted. The price for the house were thoroughly discussed before the division. All were in agreement. I don't think it would have made any difference if you had been present. They still would have done the same thing.**

It is too late to change these rules now. That would require another meeting and I don't intend to do that again. Also, if we change things to satisfy you, others would ask for changes. There would be no end to it.***

If I don't hear from you on time to stop Ewell before _____ 15th, I will withdraw from any more discussions with anyone and let Ewell handle it. I can't take any more of this.

All the others have signed to let me have the old car.**** Do you want to bid on it too or how do you want to dispose of it.

Leslie

---

*Untrue - 3 heirs had not agreed; plaitiff not present at meeting.

**Plaintiff bid ____ for house.

***_____ show he changed rules for other heirs.

****Plaintiff agreed to give him the car but insisted on bidding improvements.

MAILGRAM

* * *

MIDDLETOWN, VA. 2264
4-0053988302002 10/29/81 ICS IMPGNGZ CSP FCHC
I 7032567595 MGM IDBN ALEXANDRIA VA 10-29 0753A EST

JOSEPH L BENSON, LOUELLA
6432 MONTROSE ST
ALEXANDRIA VA 22312

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

7032567595 TDBN ALEXANDRIA VA 43 10-29 0753A EST
FON 3185282151
LESLIE FAUL COPY MESSAGE, RUSH PHONE IMMEDIATELY
528 PATTON ST
SULPHUR LA 70663

PLEASE FORWARD COPY OF LEASE. EURA AND I HAVE COME TO AN AGREEMENT. I HOPE YOU AND I CAN REACH AN UNDERSTANDING ON THE HOUSE, THAT IS THE ONLY THING PREVENTING THE STRIPPING, IF NOT, AM SUBMITTING A FORMAL BID OF $17,000. LOVE

LOUELLA

0757 EST

MGMCOMP MGM

Nov. 6, 1981

If the surveyors find that the house is all on my land, I will hold everyone to the agreement 9 of us made. NO Bids. I have already won it and will fight you in the courts or otherwise to keep you from getting it.*

*Untrue. 3 heirs had not signed. To fight me in courts and "otherwise" tells *all*.

signed,
Leslie

TRANSCRIPT OF PROCEEDINGS

TRANSCRIPT — VOL. I

[100] A According to our findings, if you were to get in from the porch, had that line been drawn in that position, you would have had almost a foot — well, ninety-six hundredths of a foot and fifty-seven hundredths of a porch overlapping into Tract Number 4.

Q So an easement would have been required at the back door to enter the house off of Tract 4?

A An easement of some sorts in order to get into the back porch would have been necessitated, otherwise they would not have been able to get out of the porch.

MRS. BENSON: I think that's all, Your Honor, but I need to get those exhibits.

THE COURT: All right.

MRS. BENSON: I have a couple of other plats, but they're not important so I will just not enter them.

I would like to tender Exhibit 9 which is the first survey made by Morgan Goudeau & Associates.

MR. BRANDT: No objections.

THE COURT: I will be received.

(Whereupon Plaintiff's Exhibit 9 was admitted into evidence.)

MRS. BENSON: In 1981.

THE COURT: It will be received in evidence.

MRS. BENSON: Pardon?

THE COURT: No objection by counsel. It will * *

TRANSCRIPT — VOL. II

[62] * * * letter? Because, first, we're going to establish rights to properties and obligations from documents, that is estates, partitions and sales, so he's saying what is the relevance of —

MRS. BENSON: Two things, Your Honor. Mr. Brandt did not object on the exhibit list —

THE COURT: Doesn't have to object. In other words, he can object when you offer an exhibit as to something.

MRS. BENSON: I understand, okay.

The reason that it's necessary for me to go back into what happened in this case is that there is no way that I can establish the facts without going back as to what happened. The defendants and their counsel have made.

THE COURT: Unless this exhibit establishes some right to some immovable property, if there's some agreement or contract in the letter, I'm not interested and it's not relevant as to what somebody did.

MRS. BENSON: It establishes the rapport that I had with Lois Bearb before my father died and before they were trying to stop me from bidding and before she stated it was a closed deal.

THE COURT: I'm going to sustain the objection. Let's get on to the acquisition of the

[63] various interests by documents, deeds and documents.

MRS. BENSON: Your Honor, I'll have to take my exception to this.

THE COURT: Take it. It's noted.

MRS. BENSON: They have made serious misrepresentations to the Court.

THE COURT: I don't care what they said. I don't care what they called you. This is not a libel and slander suit. This is a damage to property suit.

MRS. BENSON: My father died. Jean Batiste Faul was my father. He died in 1980. My mother died in 1984. She was Emma Leger Faul. She died intestate.

THE COURT: Intestate?

MRS. BENSON: That's correct.

My father left a will which was furnished to me reluctantly quite a while after he died, after I had requested it verbally and in writing.

MR. BRANDT: Your Honor, I'm going to object to the testimony about the will. The will has nothing to do with the transfer of the property in this case.

THE COURT: I'm going to sustain the objection. There's been an estate proceeding. Let's get to the point where you were sent into possession of real estate or when you made acquisitions of real estate, because you can't be damaged in your property

[64] until you acquire the property.

MRS. BENSON: Your Honor, I would like to say something as far as that objection is concerned.

My father's will states that Leslie Faul should do justice with all of his chidlren.

THE COURT: You're not here to break a will or to do anything.

MRS. BENSON: No, Your Honor.

THE COURT: Let's go to the acquisitions of the properties.

MRS. BENSON: But if I could finish my sentence.

If I have to take the flooded land and if I am denied access to the Faul Road and the drainages and the damages they've done are not repaired, that is, in effect, tricking me to make the losses, and that is not fair, according to my father's will, and if I do not have access to the Faul Road and the drainage ditches as they were, then I do not own an interest in Tract 1 and the partition is not valid.

THE COURT: We're not here to set aside any partition. Let's pick up with —

MRS. BENSON: I will have to take my exception to that too.

THE COURT: Objection's noted. * * *

[74] MRS. BENSON: I stipulated that I would have to have permanent access to the road as it was in 1982.

THE COURT: What letter is that exhibit?

MRS. BENSON: It's Exhibit 52 — well, it's listed in Exhibit 15 as an attachment to the filing of June the 6th, 1983 and it's dated April the 30th, 1982.

It reads "Dear Leslie" and it's signed "Louella F. Benson," and it states I would have to have permanent access to the road as it is now in writing and the improvements would remain where they are.

THE COURT: Access to the road as is now in writing. Okay, that sounds like an offer, and I'll receive that document in evidence.

Is there a written acceptance by the heirs or by the defendants in this case?

MRS. BENSON: This is Exhibit 15.

THE COURT: I'll receive that one.

Whereupon Plaintiff's Exhibit 15 was admitted into evidence.)

THE COURT: Now is there a written acceptance by the defendants that you will have permanent access to the road as it is now if you enter into the partition agreement?

MRS. BENSON: In this proposal that Leslie wrote me that Bearb and the others signed which they
[75] concurred with later even after the fact, he states that —

THE COURT: Read me that.

MRS. BENSON: We agree that she will have full use of the road to her property.

THE COURT: Read me that.

MRS. BENSON: We agree that she will have full use of the road to her property.

THE COURT: All of them state that?

MRS. BENSON: Well, the ones who were pertinent in that agreement all signed it, and the others —

THE COURT: They are defendants in this lawsuit that signed that?

MRS. BENSON: The two defendants signed it, and some of the others signed it who were not defendants, and the others concurred, Your Honor, by virtue of the partition.

THE COURT: What exhibit is that?

MRS. BENSON: That is Exhibit 1.

THE COURT: Do you have any objections?

MRS. BENSON: With the appraisal and the cover letter.

THE COURT: Do you have any objections to that?

MR. BRANDT: No, Your Honor.

THE COURT: That will be received in evidence.

(Whereupon Plaintiff's Exhibit 1 was admitted
[76] into evidence.)

MR. BRANDT: Could we get her response to that? I don't mean to tell Mrs. Benson what to do, but if there is now a response to that, seems like it would be the time to take it up.

THE COURT: She'll take it up as she offers her stuff.

MRS. BENSON: I would like to say for the record there are other documents in which I specified use of the road, and there was only one road, Your Honor, to my residence, and there are other documents from Leslie Faul in which he agreed that I had access to the road.

THE COURT: On the basis of that exhibit that was just entered, their response to your demand that you have access to the road as it was then in writing and that response, on that basis, you entered into the partition agreement?

MRS. BENSON: That's right. That's right. That's why they put that in the agreement, in the agreement proposal.

* * * * *

[83] THE COURT: I don't think there's any dispute that an agreement was ultimately reached. I think we should get to the agreement.

MRS. BENSON: Plaintiff's Exhibit number 12.

THE COURT: It will be received.

(Whereupon Plaintiff's Exhibit 12 was admitted into evidence.)

THE COURT: Okay, what's next?

MRS. BENSON: Now, on February 20th, 1982, I had also specified use of the road.

If you would agree upon this and I could have access to the road, I would consider taking my share in what I am buying from Ura in the back part and therefore solving the above problems.

THE COURT: You're talking about a letter written when?

MRS. BENSON: February 20th, 1982.

THE COURT: You made it in no unmistakable terms like that on April 30th and that's Exhibit 15. I don't think that's in dispute. Your letter is in evidence.

MRS. BENSON: Okay. Now, I should go to the supplement to the October agreement.

[84] Prior to the supplement of November 21st to the October 12th agreement, there was some confusion because Ura Granger and I had an agreement, a verbal agreement, and in fact — it was actually in writing, the money was in escrow, where she would sell to me for $5,000.00 an acre, and at the very last minute — not the last minute, but in November of 1983, my sister Ura Granter wrote me that she didn't think that she would sell at that point.

THE COURT: You say November of '83 or November of '82?

MRS. BENSON: I'm sorry, Your Honor, November 7th, 1983.

THE COURT: Okay.

MRS. BENSON: I will enter that letter. Counsel has not objected to it.

At that point, she did not think that she would go along with selling, we'd have to talk about it, but that she would agree to dividing Tract 4 and she would take the front four acres and give me .68 of an acre more for taking the back. You see, there's a small part of the house and some of the improvements that fall on the back of Tract 4.

THE COURT: Well, what is the legal significance of this letter?

[85] MRS. BENSON: I'm getting to it. It's complicated, but I'm getting there.

And she said in that letter that she was told that I would have access to the road. And the other thing that's pertinent there is that at that point there was some confusion because Leslie and Lois Bearb wanted only the front land, so in between the October 12th letter, 1983 and the supplement of November 21st to the October 12 original proposal, there were problems because they couldn't get just front land after —

THE COURT: This person, now who is this letter we're referring to?

MRS. BENSON: Ura F. Granger. She is a sister.

THE COURT: Is she a defendant in this case?

MRS. BENSON: No, Your Honor.

THE COURT: That's insignificant. We're only interested in what these people agreed to and the party whose land it's on which is one of the defendants.

MRS. BENSON: Well, anyway, the thing that made both agreements go through is that my brother Leslie Faul, in the

supplemental of November 21st, 1983, supplement to the October 12th that he handed me on November 23rd, 1983 when my husband and I came to Louisiana said that there had been a development in that

[86] he had talked to my brother Lloyd Faul in Virginia, and Lloyd had agreed to sell his interest to Leslie, so that gave him another share that would assure him of the front of Tract 4 because he was buying Ewell Faul's share too, so because of that —

THE COURT: Let me ask you, weren't all the agreements insofar as giving you permanent access to this road by anybody dependent upon the agreement upon everybody on how the shares of the land were going to be? If everybody hadn't agreed upon how the division is going to be made, none of these offers or proposals would have any effect.

MRS. BENSON: That's well taken, Your Honor, and it should be explained.

The heirs involved in this where there was a pertinent matter involving any one of the heirs, including the two defendants Ura F. Granger and any of the others who might have contested it had signed. The others, there was no problem, and this is furthered by their signing the warranty deed for the improvements over to me. In other words, Leslie Faul requested the checks for the improvements and the land where the improvements are in November of 1983 and December of 1983 and proceeded to cash them and distributed the money for the improvements to all the heirs, and so it

[87] was obvious, in answer to your question, that there were no problems from the other heirs, and the documents that have been recorded since further support that, and I have those documents to enter them.

For example, in the supplement that I wish to enter —

THE COURT: Let's see, you have a November 7th exhibit which you propose to enter?

MRS. BENSON: Yes, Your Honor.

THE COURT: And that is a letter from who?

MRS. BENSON: It's a letter from Ura F. Granger to me, but if I could just at the moment enter that supplement.

This is the supplement to the October agreement from Leslie Faul dated November 21st, 1983, Plaintiff's Exhibit 2, and it's entitled Supplement to Proposal of October 31st, 1983.

THE COURT: First, is there an objection by defense counsel to this letter of Granger?

MR. BRANDT: Of Granger? No, Your Honor.

THE COURT: There's no objection?

MR. BRANDT: No, Your Honor.

MRS. BENSON: This is the supplement.

MR. BRANDT: But there's no objection to the Granger letter either.

[95] MRS. BENSON: * * * There was no agreement on October *31st*. The proposal agreement was mailed to me later than October 12th, so this is why the date —

THE COURT: It makes reference to the October 12th?

MRS. BENSON: That's right. And it's obvious from reading the letter it's a supplement — well it's entitled supplement.

He says here Ura's refusal to sell you here land has reduced the possibility of reaching a settlement. Although I have not had a response from you, I have been searching for another plan. I called Lloyd Sunday and he agreed to sell me his in-

terest. Due to this development, I would sell you my share of Plat Number 3 (that is the back section where the house and the improvements are located) for the same price and conditions that you had with Harvey, or it might be easier for Lloyd and I to trade and then you could buy direct from him. He would sell to me for the same price that you would pay me. I have discussed this with Lois, Ura and Ewell. All have agreed to go along with this. If you are interested, let me know at once and we can set up a date to meet at Savoie's and put it in legal form, Leslie.

I should say about this letter that it was

[96] handed to me, Your Honor, on November the 23rd, 1983 when my husband and I came to Louisiana, and in view of this supplement to the October 12th agreement, this is what made both the original agreement and this supplement go through, because Lloyd agreed to sell to Leslie, and there are other documents which verify that they went along with this that I will enter, so, if I may, I would like to tender — and of course —

THE COURT: That will be received in evidence. Is there any objection?

MR. BRANDT: No, Your Honor.

THE COURT: What is that number?

MRS. BENSON: Plaintiff's Exhibit Number 2.

MR. BRANDT: Your Honor there's another document attached to that which she didn't read.

MRS. BENSON: I'll be happy to go into that.

THE COURT: Is that also a letter from him?

MRS. BENSON: No, Your Honor, it's a letter from me to

to Leslie. Remember I said that he handed me this letter on October 23rd since we were here.

THE COURT: Yes.

MRS. BENSON: Well, he had mailed me his copy. I was not in Virginia so I had not received it, and so he had given me the original and he had asked me to mail back to him the proposal, a copy, because he didn't have * * *

* * * * *

[105] Three, oil rights were to remain in in-division. Now, what Mrs. Benson did was reject this. That's the document I asked her to introduce a little while earlier. She wrote a letter and said no.

THE COURT: Well, okay, we'll get to that when your part of the case comes on.

MRS. BENSON: I explained that.

THE COURT: Then there is some defense that you did not comply or accept, so proceed.

MRS. BENSON: Well, Your Honor, I went through that. I testified that after the October 12th proposal agreement there was a problem because Leslie Faul and Lois Bearb wanted only the front land, and this is what they mean in there by the swap. Now, the front land is worth twice what the back land is worth. Now, the reason the October 12th proposal agreement went through is because of the development of November 21st, the supplement to that. When Lloyd Faul agreed to sell to Leslie Faul, they were able to acquire frontage, and because of that —

THE COURT: The stumbling block, what you're saying, as of October of '82 was cured later, and therefore it allowed the October 12th, '82 thing — a condition was later fulfilled?

MRS. BENSON: Because of the supplement.

* * * * *

[121] MRS. BENSON: First it was the deed between Lois Bearb and Leslie Faul recorded December the 9th, 1983. And, if I may, I'd like to offer it as an exhibit.

MR. BRANDT: No objection.

THE COURT: All right, it will be received.

MRS. BENSON: I'll have to get it. I don't have that folder here.

THE COURT: What has that got to do with you. You bought something after this, as a result of this agreement?

MRS. BENSON: That's correct.

THE COURT: Who did you buy it from?

MRS. BENSON: I bought from Leslie Faul, the east half of Tract 3 where most of the improvements are, and I bought from the entire family all of the improvements.

THE COURT: When did all that take place, different times?

MRS. BENSON: I bought from Leslie Faul — he requested the check for the land in November of 1983, and I tender here a check for $20,000.00 from me, from Louella F. Benson, to Leslie Faul dated November, '83, and it's for the rear of Tract 3 per *agreements*, and I wish to enter this as Exhibit Number 3.

[122] MR. BRANDT: Your Honor, the checks showing payment for the property are irrelevant. We're not contesting the fact that there was any consideration paid.

THE COURT: That's true.

MRS. BENSON: Your Honor, I feel my checks are extremely important. These people have had my money for over three years now, and I could have invested this in the stock market and made a lot of money with it.

THE COURT: You're not trying to get your money back here in this court?

MRS. BENSON: Oh, no, but it does show —

THE COURT: No one says you didn't pay it.

MRS. BENSON: But it does show if they don't honor their agreements, it amounts to fraud.

THE COURT: There's no contention that you didn't pay for the properties you got that are of record. It's not relevant.

MRS. BENSON: But if Your Honor doesn't object, I would very much like to enter those checks for the land and the improvements.

THE COURT: Any objections?

MR. BRANDT: Your Honor, counsel objects.

THE COURT: It's not relevant. It's been stipulated to. The properties were paid for.

[123] MRS. BENSON: I am pro se, Your Honor, and I don't know much about the law, but I will have to state my exception.

THE COURT: Your exception's noted.

Don't you think it's time that we get to the next real estate transaction between you and Leslie Faul?

MRS. BENSON: Yes, Your Honor.

THE COURT: What date was all that?

MRS. BENSON: The act of partition between Leslie Faul and Lois Bearb dividing Tract 3 so that Leslie would have the east half of Tract 3 is Plaintiff's Exhibit 6. I would like to tender it. It's recorded December the 9th, 1983.

THE COURT: That will be received.
No objections to the —

MR. BRANDT: I've already admitted that.

THE COURT: Plaintiff's Exhibit 6 received.

(Whereupon Plaintiff's Exhibit 6 was admitted into evidence.)

* * * * *

[146 THE COURT: I understand there was a discrepancy, but what has that got to do with the right-of-way?

MRS. BENSON: There is a possibility that that new passage —

THE COURT: I'm not here to set different property lines either. There is no suit to alter the partition or the lines or supply missing property up here in this court. That's not before me, anything that's wrong with the — we're here for damages, water damages, back-up water and rights-of-ways, servitudes That's all we got up here, isn't that correct?

MRS. BENSON: Well, well, we're here for breach of contract —

THE COURT: Breach of contract to not supply you with a right of passage out of this land and tort damages for altering —

MRS. BENSON: Moving the road and in so doing obstructing the drainages, reverting drainages on me.

THE COURT: I'm not interested in anything else.

MRS. BENSON: And giving me access to a mud passage

as opposed to a limestone road. In other words, my position is that I had a right to a hard surface
[147] road, not a mud road, and I certainly had a right to expect that my properties would not be flooded, because nothing was ever said to me about moving the road, nor at any time did I communicate to anyone anything about moving the road. The opposite is true.

THE COURT: That's understood.

MRS. BENSON: I expressly stated —

MR. BRANDT: Your Honor, that's her position. We don't agree with it.

MRS. BENSON: Your Honor, there is a point that I feel — I'm not trying to belabor the point, but I am pro se, and there is a point I would very much like to make.

THE COURT: I'd like to know what it is, please.

MRS. BENSON: Okay. In their filings of March, 1983 where they failed to copy me — in this particular case, there were eighteen pages and there were serious misrepresentations in three —

MR. BRANDT: Your Honor, the Court's already ruled that's irrelevant and that's not before the Court and that she does have a copy of the pre-trial memorandum that I filed. That's what she's bringing up again.

MRS. BENSON: It is extremely relevant because
[148] it shows further that they were still trying to trick and undermine me and without my having a chance to tell you.

THE COURT: They're tricking you? What do you mean they're tricking you? What has that got to do with this case?

MRS. BENSON: It has something to do with this case, Your Honor, because in the documents they filed in March

of 1986 without copying me, in those documents they told you that it was my idea to move the road, which was completely false and to prove their point, they attached a sketch that I had drawn that had nothing to do with moving the road. It was a sketch attached to a good faith proposal to make them share the losses. In other words, I would share the losses if they would agree to take losses.

THE COURT: Nothing's come up about this at this point.

MRS. BENSON: I have those documents and I would like to enter them to show this.

In other words, they knew they were not telling you the truth because they failed to attach the proposal to the sketch, and had they attached a proposal and the sketch as it was —

THE COURT: Oh, they're going to try to show the idea to move the road was yours?

BENSON:...Yeah, and they were lying.

* * * * *

[151] MRS. BENSON: The letter doesn't mean very much without the picture, Your Honor. Both the letter and the picture were listed as exhibits prior to March 21st, 1986 and so was the letter of April the 30th, 1982.

I may have that as an exhibit already, Your Honor. I'm not sure.

If I could show your Honor, this is marked the old road and old ditch. This is a picture taken from the house towards Highway 343, and this is the old road, this is the old ditch with the fence in it, and if I could borrow that letter from Leslie Faul.

When I request that —

THE COURT: Is this a gate up here & what is this?

MRS. BENSON: Those are trees —

THE COURT: This right here.

MRS. BENSON: — at Highway 343 and this is Malcomb Bearb's home.

THE COURT: Where does the old road trail, in this direction like this or what?

MRS. BENSON: The remaining portion of the old road goes just like this then it curves like this. The new passage is like this.

In this letter when I had request from my
[152] brother where the property line fell within 3 and 4, he refused to show it on the plat, but he wrote me this letter on March 26, 1982 in which he says: "The first survey showing a ten-foot easement was rejected not by some but by you."

See, this is important too, because while they told you that I had agreed to moving the road, which God knows was false, he said a number of times I didn't go along with the easement, and then he goes on to say, it was promptly dropped.

They had at one time attempted to take an easement without telling me.

THE COURT: Really, isn't this letter before November and October of — when's the date on this letter?

MRS. BENSON: March the 26th, 1982.

THE COURT: It's not relevant, because whatever was said and done then makes no difference. You're counting on their agreements as of '83, in 1983 that they agreed to to give you the right-of-way. What difference does it make —

MRS. BENSON: But it does, Your Honor —

THE COURT: Even if they're trying to use that for the fact that you may have consented to putting the road there, that wasn't the agreement that you're
[153] relying on that came later. Nothing came of this.

MRS. BENSON: Well, something did come of this, because I drew a sketch with a proposal where I was going to have Leslie share the losses with me, and I attached a proposal to this sketch, and the sketch on the road had nothing to do with moving the road, and the easement I referred to was for an entrance to the back door, and I expressly referred to the road and the easement, and they turned around and left the proposal off and just presented the sketch and distorted it to make it look like I had suggested moving the road when in fact I said nothing about moving the road, and this letter shows that on that sketch that's distorted that I put the road exactly where Leslie Faul told me in this letter it fell, and if they had copied me with these documents they filed, I could have proved to Your Honor with these exhibits I had listed before they filed those documents that they were lying. They were outright lying to you, and that' s why they didn't copy me. They knew that I could prove to you that they were lying, and it's extremely important because they had represented that the property line fell there, and they had agreed to full use of the road and then they completely ignored the agreements after I took the losses in view of the agreements and proceeded to destroy the road and then

[154] distorted the situation to make it look like it was all my idea and without telling me. You know, it amounts to a compounded trick.

THE COURT: You want to enter that document?

MRS. BENSON: I would very much like to enter this. This is from Leslie Faul to myself dated March 26, 1982 and it's Exhibit 12 whatever the next letter is.

THE COURT: Is there any objection?

MRS. BENSON: And the picture —

THE COURT: Wait a minute.

MR. BRANDT: It's irrelevant, Your Honor. I mean, it doesn't say anything about where the road is or should be.

THE COURT: If that's the only objection, on relevance, it will be received.

MRS. BENSON: May I attach the picture to it, because it shows the fence?

THE COURT: Who took the picture&

MRS. BENSON: I took the picture.

THE COURT: Any objection to the picture?

MR. BRANDT: No, Your Honor.

THE COURT: Attach the picture to it. It's received.

(Whereupon Plaintiff's Exhibit 12-B was
[155] admitted into evidence.)

MRS. BENSON: I would also like to state about Mrs. Bearb's new passage that she moved, as I said, my expert testified yesterday that the .6 acre missing could be the new passage. Now, the matter here, Your Honor, in the partition, they called for about .6 more — about .6 more than the five times 9.37. In other words, there were five tracts, and when you multiply five times the 5.9737, I think it was, you had about .60 less which was the equivalent of the new passage, and my expert said that the new passage could be that acreage. Mrs. Bearb and Leslie Faul did not let me go on their land to do the survey.

THE COURT: What is this important for?]

MRS. BENSON: It is important, because if what they call for in the partition is correct, the new road could very well be part of my land.

THE COURT: What's that got to do with it? The new road, according to you, is not any good anyway because you sink on it when it's wet, so you don't have a decent servitude that you're entitled to, so what difference does it make whose land it's on?

You wanted them to comply with what you allege is a contractual right on the old road, the old Faul limestone road, and it makes no difference, really,

[156] whose property it ended up in. That was your understanding, that they agreed to give you access to it, regardless of where the lines are on that property, and you say they breached it. So that's why I wonder, what is the relevance of where either road is on whose property?

MRS. BENSON: Okay, let's see what else we have here.

THE COURT: Is this a good stopping place?

MRS. BENSON: Yes. I believe this would be a good stopping place.

THE COURT: I think we'll recess now and we'll take this back up at 9:15 Monday morning.

MRS. BENSON: Thank you, Your Honor.

(Whereupon court was in recess until 9:15 a.m. on Monday, August 3rd, 1987)

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* * * * *

[25] THE COURT: Isn't it obvious from the plat that you acquired what you acquired, didn't you? It shows it on the plat, doesn't it?

MRS. BENSON: Well, yes, sir, it certainly does, Your Honor.

THE COURT: You don't have to show anything she agreed to. Obviously she agreed because you bought it, didn't you?

MRS. BENSON: That's correct, but I'm just protecting myself in the way they bring up things after the fact and they don't copy me.

THE COURT: If you have some testimony you want to enter into the record to counter their pre-trial memorandum that it was your idea to move the road, please proceed. Let's have it, something that's not already been offered.

MRS. BENSON: I have listed as Exhibit 70 their filings that they did not copy me with, and I have listed also a copy of a proposal I had given dated November the 20th, 1983, and to this proposal I had attached a sketch, and it's important for Your Honor to understand that that proposal was in the interim in

[26] between their October the 12th, 1983 agreement and their supplement of November the 21st, 1983.

THE COURT: Does the proposal indicate that it was not your idea or that you did not want to move the road? Is that what — if so, offer it.

MRS. BENSON: Well, see, I didn't know at the time that

they were planning on moving the road, so in that proposal I made reference to an easement for the back door and the road, but they were two entirely different things. But what I want to explain further, in their filings when they didn't copy me, and I still don't have copies of those exhibits that they submitted with their eighteen pages with serious misrepresentations, they did not give Your Honor the proposal with the sketch that I drew, they gave it separately, and from the sketch that I drew to share the losses with the defendants — in other words, we were trying to settle the estate, and I told my brother in this proposal, okay — see, at the time I had purchased from Harvey Faul an undivided interest, and he was going to purchase Ewell Faul's interest, and this had been going on for a long time, so I said to my brother in this proposal, here is this sketch, how about sharing the losses. He had decided again that he wanted the house at that time. He had changed his mind earlier.

[27] He didn't want the house any more, but just before then—

THE COURT: Everybody seems to have changed their mind a lot along the way, including yourself.

MRS. BENSON: Well, that's what you've been told, Your Honor, but what I'm saying is what he accused me of is really what he did, and so since he wanted the house again, I again offered him this situation in the proposal with the sketch I said to him, let's do this. You take the house, buy the house, and take the east end of Tract 3 and I will give you an easement to enter your back door. The line falls at the door of the porch of the house. I'll give you an easement, and I even drew — I need the plat to show you this.

THE COURT: This is not relevant to me.

MRS. BENSON: Oh, it is.

THE COURT: At that time he was thinking about buying the house. This was all changed. I'm not going back behind this partition. We're not going to hear any more about what-went on before.

Now, if you have any document that you want to introduce that's the point we started on, that it was your idea to move the road, put it in.

MRS. BENSON: But that's false, and that's what I'm trying to explain.

* * * * *

[29] THE COURT: I'm not interseted in what they said and what they did. I'm interested in what was in writing and what was transferred and what was done.

MRS. BENSON: If you'll bear with me for just a minute, I can find that proposal.

THE COURT: You're not going to use verbal or oral testimony to contradict what's in a written agreement. Now if you've got some writing —

MRS. BENSON: Your Honor, my position is — I'm not trying to make things difficult.

THE COURT: Well, you're starting to make them very difficult. You're taking too much time on some stuff that's not relevant.

MRS. BENSON: You see, I have to take my exception to that, because they presented to the Court —

THE COURT: Do you have a document? Make your offerings, because I'm getting you off the witness stand pretty quick. We're in our third day of this and it's not that difficult a matter.

MRS. BENSON: May I leave the bench to get the deed?

THE COURT: Do you have something to offer?

MRS. BENSON: Yes, Your Honor.

[30] THE COURT: All right, get it.

MRS. BENSON: Your Honor, it's Exhibit 59 and if I could show the Court —

THE COURT: What is it, this 59?

MRS. BENSON: It's the proposal I had given my brother dated November 20th, 1983 to share the losses, and this is the easement I was talking about to enter the house, because the property line fell there, and it has nothing at all to do with the road, and that when they gave this to Your Honor without copying me, they gave you just this, and this was a gross misrepresentation, because I placed the road where he told me in that letter of March 26, where the road fell, and in my proposal which he did not give Your Honor with this, they presented it separately, and in my testimony of January, 1986, I had expressly told counsel that there was a proposal that went with this, so they knew it was there. They gave you a copy but they kept it separately to mislead, and in here I expressly refer to the road —

THE COURT: Who prepared this?

MRS. BENSON: I did, Your Honor.

THE COURT: And this letter also? They went together?

MRS. BENSON: That's correct.

[31] THE COURT: The letter explains this?

MRS. BENSON: Yes, Your Honor. It was an effort to share the losses. In other words, I was going to take back property if he would take back property and his land separate,

and if he didn't want the house where it was with only one lot and the easement at the back door and an interest in the flooded Tract 1, and if he did that, if he took this and that, I would take the two back ones.

THE COURT: This is being offered and I'll accept it, strictly on the basis that this is being offered to contradict anything you may have — your point that she, that Mrs. Benson, was the one that proposed the change in the Faul road.

That's the purpose of it, is that correct?

MRS. BENSON: To show —

THE COURT: That you didn't.

MRS. BENSON: That I did not and they made misrepresentations to the Court. That's Exhibit 59.

THE COURT: It will be received.

(Whereupon Plaintiff's Exhibit 59 was admitted into evidence.)

MRS. BENSON: The alternative I offered there was if he didn't want the house on one piece and the flooded Tract 1, if he would take the two back parts, I * * *

* * * * *

MRS. BENSON: Your Honor, I'm still not quite clear on the parts on the fiduciary thing. If Your Honor will let me try to establish that, then I would try to enter this document, because it's my father's will in which he says with justice for all for his children. And I don't claim to be an expert in French, but from the translation that was submitted, my interpretation is that the will says without favor and the translation says with favor.

THE COURT: Well, the problem of it is, there was a partition agreement reached that you agreed to with the other heirs, everybody agreed and then properties were disbursed according to that partition agreement which you entered into.

MRS. BENSON Subject to certain conditions.

THE COURT: Well, those conditions which you contend are part of this lawsuit, are there any other fiduciary duties that you claim in this case, any other fiduciary duties where the executor of the estate short-changed you?

MRS. BENSON: Yes, Your Honor.

THE COURT: That you didn't agree to —

MRS. BENSON: Yes.

THE COURT: — in the partition? Now what
[48] exactly specifically are you —

MRS. BENSON: For example, in 1981, I submitted a bid for $17,000.00, and my brother fired back to me a letter saying no bids, I have won it, and I will fight you in the courts and otherwise to keep you from getting it.

THE COURT: From getting what?

MRS. BENSON: The improvements.

THE COURT: When you say improvements, you're talking about the tract where the house —

MRS. BENSON: I'm talking about the improvements at that point.

THE COURT: The improvements, the building —

MRS. BENSON: At that point in '81, because, see, the land was undivided then. The partition had not been accepted. Three of us didn't go along with it.

THE COURT: But he's also an heir too, isn't he?

MRS. BENSON: That's correct. But my position is that all the heirs had equal rights to acquire the improvements, and this is why we bid, and at the time he did not want any bids. He and Lois Bearb wanted it, fifteen thousand, I think it was, and I don't feel that as an heir that I should have to defend suits against me and go through this for years and then have to sue —

[49] THE COURT: I don't believe those contentions back in '81 are relevant to that.

MRS. BENSON: All right, Your Honor, I'll have to note my exception to that.

THE COURT: Exception's noted.

MRS. BENSON: To the no bids letter from Leslie Faul and to my bid for $17,000.00 and to a plan letter that E.J. Faul had submitted in October of 1981 when he was going to have a public auction and take control of the entire estate, including the minerals, and only let back in those he wanted to, so I take my exception to that, to those things.

Your Honor, this I feel is important. It's the judgment of possession, and it's signed by Judge Lahay, and the reason I feel it's important is that the judge states in there that —

THE COURT: This is a judgment of possession sending the heirs into estate —

MRS. BENSON: Yes, sir.

THE COURT: I don't think there's any problem with that. We probably need that.

MR. BRANDT: No objection, Your Honor.

THE COURT: When was the judgment of possession signed?

MRS. BENSON: August 21st, 1981.

[50] THE COURT: It will be received.

MRS. BENSON: I need to make a point.

There's a little oil producing property on our property we inherited, and Judge Lahay states in there that the heirs can receive all properties, including the oil, without further orders of the courts. Now, I would get to receive my interest of the Cox Well as far as my father's interest. I have had my mother's interest but I have not yet received my share of the oil interest in the Cox Well. I have tried —

THE COURT: Well now, you didn't bring that claim here in this court, did you, to see that the oil company gives you your mineral rights, did you?

MRS. BENSON: I would like to stress that, because I have been told by two lawyers that Mr. Cox should have given me my money without requiring anything of me in view of this.

THE COURT: That's right, probably, but that's really not before us, is it?

MRS. BENSON: But I did want to make that point.

THE COURT: We'll accept the judgment of possession which is marked 10-B.

(Whereupon Plaintiff's Exhibit 10-B was admitted into evidence.)

[51] MRS. BENSON: There's no point in trying to enter anything else that applies to fiduciary or enjoinment? You won't alllow me to go into that, is that the understanding?

THE COURT: Probably not. What have you got now? What is this?

MRS. BENSON: This is the letter that I was talking about where E.J. Faul, in October of '81, 23rd, '81, and his first ex-wife wrote a letter to the family saying that they'll have a public auction and buy it back and only let back in those they wanted to and take complete control of the mineral rights and the estate, and the defendants were those to be included in, and of course I was on the outs, and I feel that that was most wrong, and it was shortly after that that I submitted my bid for seventeen thousand, and it was a few days later that Leslie fired back no bids and he threatened to sue me in the courts and otherwise, and Leslie had written a letter on this that what I wanted wouldn't have made any difference anyway at the time.

THE COURT: Well, I mean, I'm not going to receive it.

MRS. BENSON: I guess I'll take my exception to that, Your Honor.

Okay, here's another one from Leslie Faul

[52] dated April 20th, 1982, and it has a copy to me, and he makes a statement in here, "Louella received a copy of the official survey. She rejected the one with the easement, and unless she informs me in writing that she intends to 'grant' the easement, I will not spend money to get her one."

I need to comment about the word grant in quotes.

MR. BRANDT: I'm going to object, Your Honor, irrelevant. This is irrelevant to the issues that are before the Court today. She's talking about something that happened a year or two before. These are proposals that went back and forth between all the heirs. Had something to do with the plat. I don't know. Nothing anybody proposed was ever agreed on, apparently, so there's probably lots of disagreement. She's

alleging that this is a breach of fiduciary duty because the executor didn't agree with her every time that she wanted to do something, and that's what she's bringing up, just another occasion where the executor didn't agree with her and she's calling that a breach.

MRS. BENSON: Your Honor, he's giving you an articulate snow job again because that's not the situation.

THE COURT: Wait a minute. I'm going to
[53] sustain that. The violation of the fiduciary capacity of Leslie Faul in the complaint was alleged to have to do with not correctly apportioning the acreages in Tract 1 and 5 and in view of the partition that was subsequent or signed and has been corrected, that makes this not before the Court. That was never claimed in the complaints as part of the violation of his fiduciary capacity.

MRS. BENSON: Your Honor, if I could make a point.

You recall when my engineer testified, he said that the new passage could be the missing acreage involved. That's one point.

The other point is that the opposition told the Court in his documents where they didn't copy me that it was my idea to move the road, which was false and they knew I could prove it false, but in this one he says that I do not agree with the easement, and he puts quotes around the word grant to show — and he's really telling the family, my other brothers and sisters, that he intends to take it whether I want it or not, like I'm an heir but I don't matter, and that's what I'm saying here. It's important from this standpoint, that it shows that what they told the Court was false. I did not agree to an easement.

[54] THE COURT: Well, I'm sorry, but I don't see that as part of your claims, violation of his fiduciary capacity, and I'm going to move on —

MRS. BENSON: Well, Your Honor, I'm not referring at this point — it's not only the fiduciary matters, it affects matters of the road also, and it also affects the surveys that we have entered.

If you'll recall, there was a first survey that I entered. I had paid part of that too and he refused to give me a copy of it. I obtained it from another brother after the partition on it. He refused to give it to me, and it shows a discrepancy. It shows where they moved the line —

THE COURT: I think we've covered the discrepancies. I'm going to sustain the objection. Anything else?

MRS. BENSON: I'll note my exception to that, Your Honor.

* * * * *

Your Honor, this is a letter of August 13th, 1982. Now, you've heard a lot of testimony about chemicals. My brother mentions in this letter the chemical company who wants our property is the one David is working for. You a get all the information you want from him. I understand you are in close
* * *

[59] * * * show simply that after they had their drawing where I was not present and two others didn't go along with, it just so happened by a miracle, as Mrs. Bearb likes to refer to it, that they drew the best part and that the deceased brother's children had the flooded land.

THE COURT: Well, that never came about, did it? The divison as proposed in this —

MRS. BENSON: The deceased brother's children did have the flooded land. That's the way —

THE COURT: What is this to show?

MRS. BENSON: It's a letter to show that they had planned that before. In other words, they've got a channel straight to the man upstairs. They put tickets in a basket and they draw what they planned beforehand. That's what that shows.

THE COURT: What relevance is it, really, as to -- well everybody voluntarily or someone on their behalf entered into the division of the properties regardless of who tried to get to who before that.

MRS. BENSON: Subject to agreements, but it shows a pattern of deceit.

THE COURT: A pattern of deceit. I don't know if that's an issue in here. I think we've got legal issues in this case. That will not be received. It's not relevant.

* * * * *

[67] * * * * your business, at least not before this Court.

MRS. BENSON: My property though, I believe there's —

THE COURT: Oh, yes, the property.

MRS. BENSON: My other business I run very well. I have evidence of that. The only problem is the farm that they've interfered with.

THE COURT: Right.

MRS. BENSON: Your Honor, you may not want this either, but these are the deeds where Leslie Faul purchased from Ewell Faul his interest for $20,000.00 on credit on November the 30th, 1983, and he purchased from Lloyd Faul in December or January of 1984 for $20,000.00, and the point —

THE COURT: The relevance is, you're trying to establish values to the land?

MRS. BENSON: It's like values.

THE COURT: Okay, what is that, a sale, cash sale?

MRS. BENSON: Yes, Your Honor. It's Exhibit 74-B and 75.

THE COURT: They'll be received in evidence, a credit sale and a cash sale.

(Whereupon Plaintiff's Exhibits 74-B and 75 were admitted into evidence.)

* * * * *

[97] MRS. BENSON: It's a letter from Leslie Faul. It's to me in which he admits to the agreements, Your Honor, of October the 12th and the supplement of October 21st. I thought that was entered because that's a copy. (Nov. 21)

THE COURT: It may be under another —

MRS. BENSON: That's in the record because you addressed that. We discussed that, because —

THE CLERK: What's the date of that letter?

THE COURT: December 14th, '83.

MRS. BENSON: Your Honor had asked me Friday what that meant, it does not contain all you wanted. What that meant is they didn't fulfill the agreements as to —

MR. BRANDT: Your Honor, what the Court did was sustain my objection to her telling the Court what this gentleman meant when he wrote that.

THE COURT: Well, the letter will speak for itself.

MRS. BENSON: I have documented — what did you refer to it as, parole evidence, Mr. Brandt, where subsequent documents and documents afterwards establish what the mean-

ing of something is?

THE COURT: What you're saying, we have to look to the October 12th letter also and the November 23rd —

[98] MRS. BENSON: That's correct.

THE COURT: — in connection with this.

MRS. BENSON: That's right.

THE COURT: That's the same letter.

MRS. BENSON: Another thing counsel had represented was that there was no money mentioned —

MR. BRANDT: Your Honor, I object —

MRS. BENSON: There was —

MR. BRANDT: — because the argument by the witness on what I'm saying — I mean, she's here to testify, not respond to my arguments.

MRS. BENSON: That's right, but I am testifying as a matter of fact that attached to the October 12th, 1983 agreement there is an appraisal that expressly mentions the increased figures of eighteen eight for the improvements which I accepted —

THE COURT: You ended up paying twenty though, didn't you?

MRS. BENSON: I paid eighteen eight for the improvements. I paid twenty for the land, Your Honor.

THE COURT: Oh, okay.

MRS. BENSON: Now, when I accepted, I said I will meet your requirements, and the requirements I was referring to was the increased improvements, because the verbal appraisal

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[212] MRS. BENSON: She already said they were small, Your Honor.

THE COURT: Well, I'm asking her.

THE WITNESS: I really don't know the size the ditches were. My husband told me that he had made Mr. Citizen make the ditches —

MRS. BENSON: I object to what your husband told you.

BY MRS. BENSON:

Q. One other question, Mrs. Bearb, and then I will let you go.

When did you first decide to move the road? When was it first decided that the road would be moved?

A. The day of the drawing in 1981, and I have two of my brothers —

Q. Wait a minute. I object to that.

MR. BRANDT: I object to her interrupting. She asks a question and interrupts her.

MRS. BENSON: She's going to say what her brother said.

THE COURT: Question's been asked and answered.

A. I said, with two of my brothers present —

THE COURT: That's okay, the question has been
[213] asked and answered.

BY MRS. BENSON:

Q. So the day of your drawing?
A. Yes, ma'am.

Q. And I was not present at your drawing?
A. By your own choice.

Q. Mrs. Bearb, my husband had cancer, my husband had surgery at the time. You are aware of that.

THE COURT: I think the question's been asked and answered.

MRS. BENSON: Your witness, Mr. Brandt.

THE COURT:: I don't think he has any questions. Do you have any questions?

MR. BRANDT: No, Your Honor, I don't have any.

THE COURT: You may step down.

(Witness excused)

MRS. BENSON: Your Honor, I'll pass on my big brother. I'd like to call my husband as a rebuttal witness.

THE COURT: Oh, okay.
He was listed, I presume, as a witness?

MRS. BENSON: Yes. He's listed as rebuttal.

MR. BRANDT: He's listed as a character witness.

MRS. BENSON: He's listed as a rebuttal * * *

* * * * *

6432 Montrose Street
Alexandria, Va. 22312
April 30, 1982

Dear Leslie,

Your impression about my buying Eura's undivided interest is totally unfounded. You were mis-informed. By now you have received a copy of my letter to Broussard, Eura's lawyer, with a check for $23,425.00 to be held in escrow until the agreement Eura and I have had since the October meeting on the joint-ownership can be finalized. As you know the land has been divided as noted by the notes of the meeting in your handwriting. For further information enclosed is a copy of another letter to Broussard dated April 15.

The remarks in your prior letter which you circulated are equally unfounded and the evidence is available in writing. This does not enhance the ultimate goal which we are trying to achieve. Let me say also at this point as a word of caution that Mr. Savoie's remarks on the letter he circulated were indeed wanting and I am very aware of my legal rights in all areas. As you know, I have offered to take the two rear halves of Tracts 3 and 4 if you and Lois agreed to give me one extra acre between the two of you which was rejected by both of you. I offered you an easement for you and any of your heirs with the understanding that if ever the house was sold I could buy it at the price you paid for it plus any improvements. You were insulted by this.

In efforts to end this charade I am offering the following:

I will take the rear parts of Tracts 3 and 4 (subject to my approval of property lines) and pay $15,000.00 for the house. I would have to have permanent access to the road as it is now in writing and the improvements would remain where they are. Obviously the mineral rights present and future must be

shared equally by everyone. I do not want any digging for pea gravel or any such thing other than minerals on my acres but would not expect to share the proceeds if anyone else decided to allow digging for pea gravel on their respective property.

Hope you appreciate the concession considering the value of land.

Should my proposal not be accepted then please forward a copy of the first survey you had made and plats showing where the line falls on the road and the house. I reserve the right to my own survey under those conditions in view of different opinions. As to the "undivided brainstorm," for Eura to capitalize on the fact that our joint property falls on the house for economic reasons is unfair to me. The land she drew is *undivided*. Frankly at this point, I will not give you any easement because of the way you have treated me. You will recall you wrote me about asking Eura for an easement on our undivided property without even mentioning it to me because you did not think I would agree. Eura's recent sudden move is hardly the answer. Problems cannot be solved by ignoring one's rights, not to mention the legal consequences. You have written me that the rules of the meeting cannot be changed. This should also apply to the mineral rights.

Before you have the place sold make sure you follow all of your own rules because I will hold you up to the Minutes of the Meeting just as I am holding Eura to her agreement, supported by the Minutes and your letters. Should my offer be rejected and Savoie writes up another petition both you and he are very aware of my requirements and do not forget the protective clause on joint ownership.

Love to all,

/s/ Louella F. Benson

cc: all heirs, w/encl.
Harold Savoie, Esq.

* * * * *

interest on the rest — in other words, you would receive any lease money and the only way he could receive any money would be in the event there is production from the area outside of the Edwin Cox Production unit.

You will note, also, that your brother, Leslie, transfers to you any and all rights, title and interest he has in and to the 20-foot wide servitude of passage so as to permit ingress and egress to and from the property.

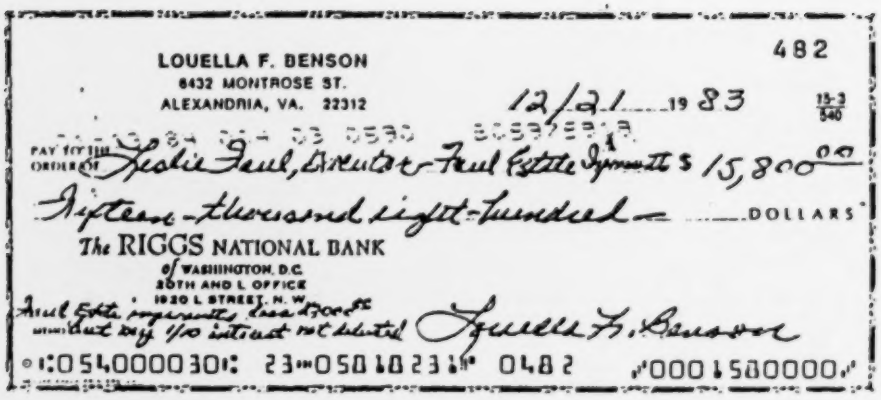
In the event there is any question, please advise.

Sincerley,

/s/ Charles C. Broussard
Charles C. Broussard

CCB/nbb
Encls.
cc: Mrs. Eura Faul Granger
Route 1, Box 508M
Pickens Road
Sulphur, Lousiana 760663

Mr. Leslie Faul
528 Patton Street
Sulphur, Louisiana 70663



LOUELLA F. BENSON
8432 MONTROSE ST.
ALEXANDRIA, VA. 22312

482

12/21 19 83

15-3
540

PAY TO THE ORDER OF Leslie Paul, Executor-Paul Estate Agreement $ 15,800 00

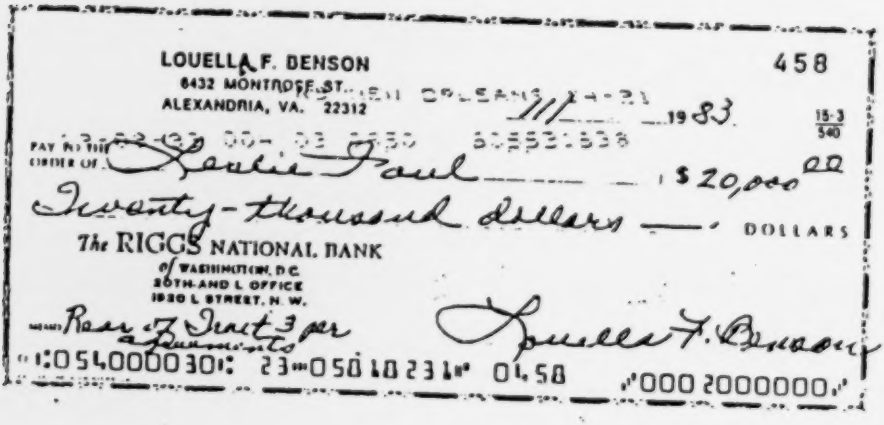
Fifteen-thousand eight-hundred ——— DOLLARS

The RIGGS NATIONAL BANK
of WASHINGTON, D.C.
20TH AND L OFFICE
1920 L STREET, N. W.

Paul Estate requires two (2) signatures on checks but only 1/10 interest not admitted

Louella F. Benson

⑆054000030⑆ 23-0580/0231 0482 ⑈000158000⑈



LOUELLA F. BENSON
8432 MONTROSE ST.
ALEXANDRIA, VA. 22312

458

NEW ORLEANS 12-21

12/21 19 83

15-3
540

PAY TO THE ORDER OF Leslie Paul $ 20,000 00

Twenty-thousand dollars ——— DOLLARS

The RIGGS NATIONAL BANK
of WASHINGTON, D.C.
20TH AND L OFFICE
1920 L STREET, N. W.

Rem: Z Trust 3 per Agreement

Louella F. Benson

⑆054000030⑆ 23-0580/0231 0458 ⑈000 2000000⑈

10/12/83

Proposals to Louella Faul Benson

The majority of the Faul heirs have agreed to offer Louella the following concessions if she will agree to sign the original division plan.

1. We agree, to let her purchase the house and improvement at the appraised price as per enclosed copy of appraisal. The above to be moved on her plat at her expense.

2. In the event that she buys Eura Granger's share of the estate, we would further agree to trade plats with Louella so she can have the house and improvements where they are and moving them would not be necessary. However she and Eura have to make their own agreement and the family will not be a party to their agreement. We also agree that she will have full use of the road to her property.

3. The oil rights to remain in in-division as it is now. However each owner will be responsible to lease his or her own property for the mineral rights.

4. The trade mentioned in item 2 would be for equal acreage and must be the front part of plat #4.

[Signed]:

Leslie Faul
Lois F. Bearb
Grace _____ Kidder
Jeanell Faul Lorrain
Eura M. Granger

GLEN LEGER REAL ESTATE LICENSED—BONDED—BROKER

Phone 948-3344 255 Hibiscus St. OPELOUSAS, LA. 70570

Oct. 17, 1983

Estate of J.B. Faul
Mrs. Melvin (Grace) Kidder, et al
Bristol Community
Bristol, La.

Dear Sir:

In acordance with your request of the fair market value to the unemcumbered fee simple title to movable property of the J.B. Faul Estate located in Bristol, La., I list the following:

A one story frame dwelling having 1596 sq. ft. living area.
VALUED AND APPRAISED AT ----- $15,800.00

A dairy building constructed with concrete blocks,
VALUED AND APPRAISED AT ----- $1,500.00

A barn constructed with cypress
VALUED AND APPRAISED AT ----- $1,500.00

I have personally viewed the properties and in my opinion this is the fair market values as of 10-15-83.

/s/ Glen Leger
Glen Leger, Appraiser

Supplement to proposal of Oct. 31st)

Sulphur, La.
Nov. 21, 1983

Dear Louella,

Eura's refusal to sell you her land has reduced the possibility of reaching a settlement. Although I have not had a response from you, I have been searching for another plan.

I called Lloyd Sunday and he agreed to sell me his interest. Due to this development, I would sell you my share of plat #3 (that is the back section where the house and improvements located) for the same price and conditions that you had with Harvey — or it might be easier for Lloyd and I to trade and then you could buy direct from him. He would sell to me for the same price that you would pay me. I have discussed this with Lois, Eura & Ewell. All have agreed to go along with this.

If you are interested, let me know at once and we can set a date to meet at Savoie's office & put it in legal form.

Leslie

11/26½83

Dear Leslie,

As per your letter of Nov 21, 1983 and supplement to proposal of Oct 31, I accept your proposal to purchase the back section of #3 where the house and improvements are located and will meet your requirements.

We have executed the partition on this date. Eura will contact you as soon as Harvey signs the partition. Please take immediate steps to have the suit dismissed promptly.

Please let me know when you want your money.

Love,
Louella

NOTE: The requirements plaintiff was referring to was the increased amount for improvements in agreement of OCt. 12, 1983, and attached to Oct. 12, 1983 agreement, further tieing it in, in addition to the fact that the attached Nov. 21, 1983 agreement clearly says *Supplement* to Oct. agreement dated Oct. 12 but mailed on Oct. 31, 1983, and that Lois F. Bearb also agreed, as represented by Executor Leslie Faul in Supplemental agreement and Lois F. Bearb also agreed verbally later.

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUSIANA

LOUELLA V. BENSON, Plaintiff vs. LOIS FAUL BEARB, LESLIE FAUL, and LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT Defendants	CIVIL ACTION, FILE NO.CV84-2541 SECTION "O"

INTERROGATORIES TO DEFENDANT

FILED:_____ _____
DEPUTY CLERK

TO: Leslie Faul
c/o Charles Brandt
P.O. Box JJ
Lafayette, La. 70502

Interrogatories are being sent for Defendant Leslie Faul through his attorney of record, to be answered separately and fully in writing and under oath by defendant within fifteen (15) days in accordance with the Federal Rules of Civl Procedure:

1. Please state your name, address and education, your age and occupation.

   Leslie Faul, 528 Patton Street, Sulphur, LA 70663, graduate of Sunset High School, graduate of Vincent Business College, graduate of ICS Petroleum Refining; now retired supervisor, 65 years old.

2. I have noted that you have installed a big culvert in the ditch in front of your Tract 5 of the Faul estate, did you in any

way have anything to do with the obstruction of the same public ditch where the "new passage" is, or with the digging of the deep ditch in front of my property or with the destruction of the Faul Road, the removal of the cattle guard which our Father had over the ditch at the front of the Faul Road for years or with the drainage problems.

---

* * * at considerable expense-not destroyed. The Highway Dept. dug the ditch, address your questions to them. You were promised a road to your property, not a cattle guard.

STATE OF LOUISIANA
PARISH OF

BEORE ME, the undersigned authority, personally came and appeared LESLIE FAUL, who, being by me first duly sworn, did depose and say that the above answers to the interrogatories have been read and are true and correct to the best of his knowledge.

/s/ Leslie Faul
LESLIE FAUL

Sworn to and subscribed before me, Notary Public, on this 20th day of March, 1985.

/s/ Nancy O. Perkins
NOTARY PUBLIC

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUSIANA

LOUELLA V. BENSON, Plaintiff vs. LOIS FAUL BEARB, LESLIE FAUL, and LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT Defendants	CIVIL ACTION, FILE NO.CV84-2541 SECTION "O"

INTERROGATORIES TO DEFENDANT

FILED:_____ _____
DEPUTY CLERK

TO:
Lois Bearb
Through her attorney of record:
Charles Brandt
P.O. Box JJ
Lafayette, La. 70502

Interrogatories are being sent for Defendant Lois Bearb through her attorney of record, to be answered separately and fully in writing and under oath by defendant within fifteen (15) days in accordance with the Federal Rules of Civil Procedure:

1. Please state your name, address, education, your age and occupation.

Mrs. Lois Bearb, Rt. 2, Box 124, Church Point, LA 70525, Age 54, occupation, housewife.

12. In view of your signature on the agreement you signed on Oct. 12, 1983, the representations in the Nov. 21, 1983, supplemental agreement, subsequent verbal confirmations by you to Leslie, and having received your interest in the improvements, state in detail why you deny in your answers, the issues in my No. 4 of complaint.

I agreed to let you have use of my road and you have that. I never promised any special kind of road. The surface of the old road was scraped and applied to the new one. The new road is well constructed. It is good and attractive and is an asset to both your property and mine.

Part of the agreement of October 12 was that Eura would sell to you and then you would trade with Leslie. Eura then refused to sell. Why didn't you sue her? At this point, the agreement was nullified, however, I still gave you a road.

STATE OF LOUISIANA
PARISH OF

BEFORE ME, the undersigned authority, personally came and appeared LOIS FAUL BEARB, who, being by me first duly sworn, did depose and say that the above answers to the interrogatories have been read and are true and correct to the best of his knowledge.

/s/ Lois Faul Bearb
LOIS FAUL BEARB

Sworn to and subscribed before me, Notary Public, on this 21st day of April, 1985.

/s/ Wade G. Faulk
NOTARY PUBLIC

Plaintiff's No. 5

Monday, 11/7/83

Dear Louella,

I wish you had talked to me when I called because the time is getting very short to write.

To try to settle all this once and for all before there is a forced sale, I decided that I would take 4 acres of frontage & let you have the area where the house is.

If you decide to agree to my offer, you will gain 7/10 an acre & the house is partly on it.

Of course this has nothing to do with my share of the improvements. I keep that and my mineral rights.

You would have access to the road too I was told.

Think about it & call me, the 14th is when they are forcing a sale.

Love
Eura

P.S. I have returned my 1 kt and ½ kt diamond the wedding is off.

Plaintiff's 9-A

Sulphur,
Dec. 1, 1983

Dear Family,

The final partitation of our estate is being realized. The partitation document was signed by all and recorded by me, Nov 30, 1983.

The legal picture looks like this — Louella owning the lower portions of tracts 1, 3 & 4. Leslie owning all of tract 5, Leslie's heirs front of tract 1, Grace & Janell all of tract 2, Lois front of tract 3 and Eura front of tract 4. This was done by swaps & direct sales.

Louella has offered the appraisal price of $18,800 for the improvements - house $15,800, barn, $1500, dairy $1500. The partitation document provides that there be a family (direct heirs) auction for the improvements. If anyone wishes to submit a higher bid than the above mentioned notify me, in writing before Dec 12, 1983 and we will set a date for the auction. After Dec. 12, if I have not heard from anyone, the improvements will be sold to Louella for the above mentioned sum.

The suit for public auction of all the family estate is being dismissed today — Dec 1, 1983.

Best wishes to all,

Leslie

Secret filings prior to rulings — some of the misrepresentations 3/17/86

* * * Harvey, *or* (2) Lloyd and Leslie traded and Lloyd sold to plaintiff for the same price that plaintiff would pay to Leslie.

This letter to plaintiff did not constitute a valid offer to sell immovable property. First, there is no mention of a price, in writing, as a contract dealing with immovable property is required to contain under Louisiana law. *Louisiana Civil Code* Articles 1839, 2440, 2439. Secondly, the negotiations were conditioned upon Lloyd transferring his interest to Leslie and, as the evidence will show, this had not occurred even at the time Leslie sold the property to plaintiff.*

This letter is only evidence that Leslie was at the time, searching for some way to satisfy plaintiff's desires to obtain possession of the house, barn, dairy and the land where these buildings were located. These negotation efforts were "accepted" by the plaintiff, and constitute the basis for her belief that there is a valid contract to sell real estate as of the date of her acceptance in November, 1983. However, defendants

*Not true - See deed 5-C 6847696.

Given to Court in Secret filing of *3/17/86* by opposition. See cancelled checks at Exh. 2; cashed and the improvements. See copies of agreements attached (note check expressly says per agreements.) Note at 8-b, plaintiff said she would "meet their requirements" which was the increased appraisal stipulated in Oct. 12, 1983 agreement and in the appraisal attached to it. See No. 4 where plaintiff had stipulated in 1982 with copies to all heirs that she would have to have permanent access to the road as it was then. Plus all other such letters prior and after 1982. Supplement means in addition to. That Leslie Faul was able to buy from Lloyd Faul cured the problem. Why did they take plaintiff's money if they did not want to sell. They were lying secretly. See No. 3, where Eura F. Granger wrote 11/7/83, after she decided to *divide* only that she was told plaintiff would have access to the road. See Briefs. See No. 1 letter from Leslie Faul of *12/1/83* and *3/5 84*, No. 7. That they tried secretly to negate the agreements 3 years after asking for and receiving $38,800 — tricking her into taking losses, is fraudulent, like the road.

contend that "preliminary negotiations cannot be allowed to contradict or to vary the terms of a written contract, but may be used only to determine the intent of the parties." *Freeport Sulphur Company vs. Aetna Life Insurance Company,* 107 Fed. Sup. 508 (Mod. 2067 Fed. 2nd 5). Again, it is pointed out, that absolutely no mention of the servitude of passage is contained in any of these documents.

Plaintiff contends that the documents which led up to the Act of Sale to plaintiff from Leslie Faul are the true substance of the transfer title to Mrs. Benson. These documents dated October 31, 1983 and the supplement dated November 21, 1983 purportedly embodied the entire purchase agreement between Mr. Faul and plaintiff. It is plaintiff's contention that there was an agreement, in writing, between Louella Benson and Leslie Faul that Leslie Faul would sell to Louella Benson the rear of Tract 3 contained in those documents. It is noted for the Court that the alleged "supplement" was not an offer to sell, but was an attempt by Mr. Faul to obtain for plaintiff the property with the improvements thereon, and was a letter attempting to bring her up to date on his efforts in connection therewith.

The title in this case does locate the location of the servitude. The title further requires the owner of the dominant estate to make changes at his expense. Even with this not so, the Civil Code requires the owner of the dominant estate to maintain and preserve the servitude. In interpreting this servitude as to its existence, extent or manner of exercise, the Civil Code provides that any doubts are to resolved in favor of the servient estate, e.g., in favor of the defendants.

CHARLES BRANDT
Attorney for Defendants
300 B Stewart Street
Lafayette, Louisiana 70501
(318) 237-7171

COB 0225 PAGE 370 No. 684769

CASH SALE

STATE OF VIRGINIA, COUNTY OF FAIRFAX

BE IT KNOWN, That on this 11th day of Jan 1984 AD in the year of our Lord nineteen hundred and eighty four before me, the undersigned Notary Public in and for said parish and State, duly commissioned and qualified as such, personally came and appeared

MR. LLOYD FAUL, a married man, the name of whose wife is Ann Stefanovich Faul, a resident of Fairfax County, McLean, Virginia

who declared that for the consideration hereinafter mentioned he does by these presents, sell, transfer and deliver with full guarantee of title and free from all encumbrances and with subrogation to all his rights and actions of warranty against previous owners, unto

MR. LESLIE FAUL, husband of Mabel Mary Faul, nee Richard a resident of Calcasieu Parish, State of Louisiana

Mailing Adress: 528 Patterson, Sulphur, Louisiana 70663

present, accepting and purchasing for himself and heirs and assigns, and acknowledging delivery and possession thereof, the following described property, to-wit:

All of the vendor's rights, titles and interests, in and to the following tract of land, namely:

That certain tract of land without all improvements thereon and thereunto belonging situated in the Parish of St. Landry, State of Louisiana, United States of America, in Acadinna, at Coulee Croche, Lne. situated in Sec 23 T 8 South Range 3 East of the said Parish of St. Landry, containing 47.46 acres of land, more or lesss,

as per old measurements of record in the Courthouse at Opelousas, La.

CF Acts 177,994; 171,006; 190,446 of St. Landry Parish, La.

This property in toto is bounded Northerly by Ellis Jos. Richard or assigns; Southerly by Oday Trahan heirs or assigns; Easterly by Mrs. Ferriol Leger or assigns, and Westerly by La. 343 (State of Louisiana)

This is not the family home of the vendor and not the family home of the vendee.

This property is further known as the J.B. Faul Estate and as surveyed by Mr. Morgan J. Goudeaux, Opelousas, La. under date of 11/20/81, designated as project 2197, which plat divides the J.B. Faul et ux Estate into 5 tracts of 9.37 acres each.

RESERVATION: The vendor reserves unto himself an undivided one half (1/2) of all of his oil, gas and minerals, mineral rights, royalty rights in and to the real estae hereinabove described.

No title examination was made and none was requested.

The specific interest of vendor being 4.685 acres of land, more or less, being 1/2 of Tract No. 5 of a certain tract of land formerly belonging to the J.B. Faul et ux estate, the said tract No. 5 consisting of 9.37 acres of land more or less as per plat of survey by Mr. Morgan J. Goddeau, C.E. dated 20 Nov 1981 in Sec 23 T 8 S R 3 E, St. Landry Parish, Louisiana. Said Tract 5 being bounded North by Trac 4, South by property of Oday Trahan, heirs or asigns, East by Mrs. Ferriol Leger and West by La. 343.

Vendee assume the payment of all taxes assessed against the property herein sold for the year 1984. This sale is made

and accepted for and in consideration of the sum of Twenty thousand and no/100ths ($20,000.00) Dollars, cash in hand paid, for which acquittance is herein granted.

Purchaser dispense with certificate required by Article 3361 of the Revised Code of this State, and also with the production of tax receipts required by law.

Done and passed at the County of Fairfax, Virginia, on the day and date first above written, in the presence of and competent witnesses, who sign with appearers and me, officer, after due reading of the whole.

WITNESSES:

/s/ Judith A. Berlman

/s/ Marianne Jarvis

/s/ Lloyd Faul
Mr. Lloyd Faul

/s/ Ann S. Willey
Notary Public
My Commission Expires
January 28, 1988

State of Louisiana
Parish of Lafayette
Done and passed at the Parish of Lafayette, Louisiana, on this 24 day of December 1983 in the presence of the undersigned competent witneses, who sign with appearer, Mr. Leslie Faul, and me, officer after due reading of the whole.

Witnesses:

1. /s/ Colleen F. Landry

2. /s/ Daniel K. Landry

/s/ Leslie Faul
Mr. Leslie Faul

/s/ Harold Savoie,
Notary Public

Law Offices of Harold L. Savoie
P O Box 2881, 304 West Convent St
Lafayette, Louisiana 70502
Duson Bar, Inc. Le Batonnier
Phone 318 235 7371

COB X24 Page 652

ACT OF PARTITION

STATE OF LOUISIANA
Parish of St. landry

BE IT KNOWN, That on this 9th day of December, 1983, personally came and appeared:

LESLIE FAUL, husband of Mabel Richard, hereinafter called "Faul", a resident of Calcasieu Parish, whose address is 528 Patton Street, Sulphur, Louisiana 70663, and

LOIS FAUL, wife of Forest J. Bearb, hereinafter called "Bearb", a resident of Acadia Parish, whose address is Route 2, Box 124, Church Point, Louisiana 70525, both parties contracting as to their own separate property which they acquired through inheritance of their parents, John Baptiste Faul and wife, Emma Leger.

Appearers declared that they are the owners in common, in the proportions of an undivided one-half (1/2) each, of the hereinafter described property acquired by them in an Act of Partition of the heirs of John Baptiste Faul and Emma Leger which was recorded on November 30, 1983, as Original Act No. 681949 in C.B. X-24, page 260, Recorder's Office, St Landry Parish, Louisiana;

Tract 3, containing 9.37 acres in Section 23, Township-Eight-South (T-8-S), Range-Three-East (R-3-E), St. Landry Parish, Louisiana; said Tract having a front of two hundred fifteen and 6/10/ (215.6') feet on its Northern boundary, one thousand nine hundred twelve and 6/10 (1,912.6') feet on its Southern boundary, and with its rear or Easterly boundary being two hundred eighteen and 7/10 (218.7') feet, and being further shown and described on the Plat of Survey attached to the Act of Partition mentioned above.

Appearers declared that they no longer wish to remain as owners in indivision thereof, and desire to amicably divide the same between them, and accomplish their mutaul wishes and desires, have agreed that approximately one-half (1/2) of the said property should be vested in the said Fual, and remainder of said property should be vested in the said Bearb.

No.682337
Filed 12-9-83 Time 3:57 PM

March 2, 198____
See Act of Correction recorded this date in COB B-25, pg. 334, ac. #684771.
Verna C. Dunham
Dy. Clerk

* * * * *

Now, in order to carry out the said partition and to confer upon each, a full and complete title, in due form, to the said properties, which said parties have severally agreed to take, the said Faul, in consideration of the properties hereinafter received by him as his full share in this partition, does hereby grant, bargain, sell, convey, transfer, assign, set over, abandon and deliver with all legal warranties and with full substitution and subrogation, in and to all the rights of actions of warranty which he has or may have against all preceding owners or vendors unto LOIS FAUL, wife of Forest J. Bearb, here present and accepting and purchasing for herself, her successors, heirs and assigns, and acknowledging due transfer and delivery, all and singular the following described property to-wit:

> The Western half of Tract 3 of the property received by appearers in the partition referred to above, said tract having a front of two hundred fifteen and 6/10 (215.6') feet on Louisiana Highway No. 343 and running back in an Easterly direction of nine hundred forty-six and 56/100 (946.56') feet on its Northerly boundary and nine hundred forty-six and 56/100 (946.56') feet on its Southerly boundary and having a rear or Easterly boundary of two hundred fifteen and 6/10 (215.6') feet, being more particularly described as a tract of land situated in Section 23, Township-Eight-South (T-8-S), Range-Three-East (R-3-E), St. Landry Parish, Louisiana, commencing in the Northwest corner of said Tract 3 which will be the starting point, thence N 89° 54' 30'' E, a distance of nine hundred forty-six and 56/100 (946.56') feet; thence S 0° 04' W, a distance of two hundred fifteen and 6/10 (215.6') feet thence S 89°

54′30″W, a distance of nine hundred forty-six and 56/100 (946.56′) feet; thence N 0° 04′E, a distance of two hundred fifteen and 6/10 (215.6′) feet to the point of beginning. All as shown on the Plat of Survey by Morgan Goudeau & Associates, dated December 6, 1983, attached hereto and made part hereof and identified as Lois Bearb, 4.685 AC.

And, in order to carry out said partition and to confer upon each, a full and complete title, in due form, to the said properties, which said parties have severally agreed to take, the said Bearb, in consideration of the property herein received by her as her full share in this partition, does hereby grant, bargain, sell, convey, transfer, assign, set over, abandon and deliver with all legal warranties and with full substitution and subrogation, in and to all the rights of actions of warranty which she has or may have against all preceding owners or vendors unto LESLIE FAUL, here present and accepting and purchasing for himself, his successors, heirs and assigns, and acknowledging due transfer and delivery, all and singular the following described property to-wit:

Commencing at the Southeast corner of Tract 3 referred to above, being the tract of land appearers herein own in indivision, which will be starting point, thence S 89° 54′30″W, a distance of nine hundred sixty and 20/100 (960.20′) feet; thence N 0° of 04′E, a distance of two hundred fifteen and 6/10 (215.6′) feet; thence N 89° 54′30″E, a distance of nine hundred twenty-eight and 64/100 (928.64′) feet; thence S 90 43′40″E, a distance of two hundred eighteen and 7/10 (218.7′) feet to the point of beginning. All as shown on the Plat of Survey attached hereto and made part hereof identified as LESLIE FAUL, 4.685 AC.

As a consideration for this this Act of Partition, Bearb agrees

to give to Faul, but only for the use of the owner of the tract he receives in this partition, servitude of passage of twenty (20') feet in width commencing on Louisiana Highway 343, adjacent to the Southerly boundary of said Tract 3, and running in a Easterly direction along the Southerly boundary of Tract 3, as shown on the attached plat, a distance of nine hundred forty-six and 56/100 (946.56') feet, or to the property acquired by LESLIE FAUL, in this partition. It shall be the duty of Faul, or his successor in title to said property, to maintain this right of way in good condition with shell, gravel or similar material at all times, and Bearb reserves the right for herself, her heirs or successors, to use this right of way.

All of the oil, gas, and other hydrocarbon minerals are to remain in indivision.

The parties declared that the properties received by each, being of approximately the same value, each receives an interest valued at approximately the same amount. No sum of money is to be paid by either of them to each other, and accordingly, by means of this instrument, each has * * * *

* * * * *

* * * received and is in possession of the properties herein allotted to each of the aforesaid, and they do hereby discharge each other from all credits, matters, debts and things whatsoever in the premises, hereby acknowledging themselves, respectively, to be fully satisfied with this partition.

The parties hereto waive the production of mortgage, conveyance and other certificates, and relieve and release me, Notary, from any and all responsibility in connection therewith.

The parties hereto declare that they have not alienated or encumbered the hereinabove described property, and that to the best of their knowledge and belief, the same is subject to no liens or encumbrances whatsoever, and agree that if there are any omissions or errors in the descriptions that they will correct the same when called upon to do so.

THUS DONE AND PASSED on the date above written, in the presence of the undersigned competent witnesess, after a due reading of the whole.

WITNESSES:

/s/ Nanette Deshotel
NANETTE DESHOTEL

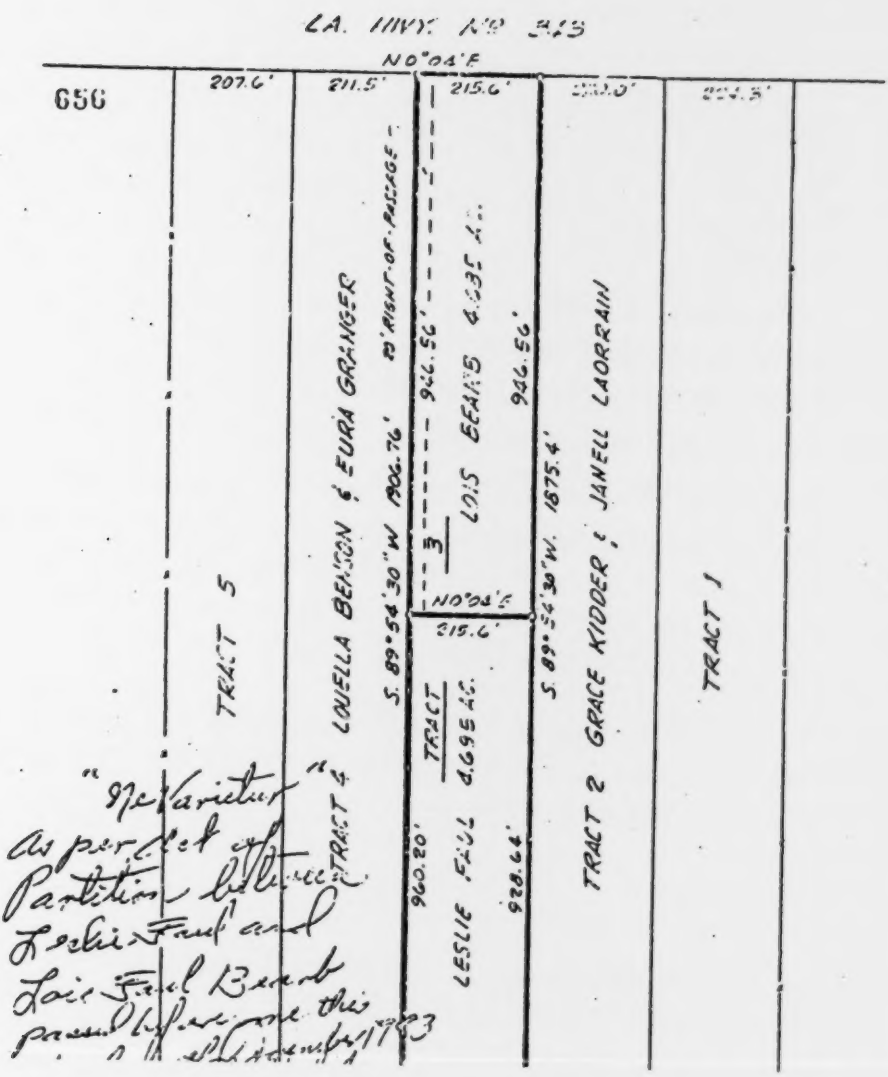
/s/ Leslie Faul
LESLIE FAUL

/s/ Juliette C. Goudeau
JULIETTE C. GOUDEAU

/s/ Lois Faul Bearb
LOIS FAUL BEARB

/s/ C.Kenneth Deshotel
C. KENNETH DESHOTEL
Notary Public

A True copy:
/s/ C. Kenneth Deshotel
Notary Public


LA. HWY. NO 343
N0°04'E
656
207.6'
211.5'
215.6'
TRACT 5
LOUELLA BENSON & EURA GRANGER
TRACT 4
S. 89°54'30"W 906.76'
15' RIGHT-OF-PASSAGE
946.56'
3
LOIS BEARS 4.032 AC.
946.56'
N0°04'E
215.6'
960.20'
TRACT
LESLIE FAUL 4.696 AC.
928.64'
S. 89°54'30"W. 1875.4'
TRACT 2 GRACE KIDDER & JANELL LAORRAIN
TRACT 1
"Re Variation"
as per Def of
Partition between
Leslie Faul and
Lois Faul Bears
pursuant to the

WARRANTY DEED

STATE OF LOUISIANA :
PARISH OF ST. LANDRY :

BE IT KOWN, that before us, the undersigned Notaries Public, on the dates and at the places indicated, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared

> LESLIE FAUL, husband of Mabel Faul, born Richard, a resident of Sulphur, Calcasieu Parish, Louisiana, hereinafter referred to as "Vendor",

who, being first duly sworn, declared that, for and in consideration of the sum and price of TWENTY THOUSAND and no/100 ($20,000.00) DOLLARS, cash, receipt of which is hereof acknowledged and full acquittance granted therefor, he does hereby grant, bargain, sell, convey, transfer, assign, set over, abandon and deliver, with all legal warranties and with full substitution and subrogation in and to all the rights and actions of warranty which Vendor has or may have against all preceding owners and vendors, unto

> MRS. LOUELLA FAUL BENSON, born Faul, wife of Joseph L. Benson, herein purchasing with her separate and paraphernal funds under her separate and personal administration for her separate and paraphernal estate, hereinafter referred to as "Vendee", whose mailing address is: 6432 Montrose Street Alexandria, Virginia 22312,

here present, accepting and purchasing for herself and her heirs and assigns, and acknowledging due delivery and possession thereof, all and singular, the following described property situated in the Parish of St. Landry, State of Louisiana, to-wit:

Tract Three (3) of the Partition of the JOHN BAPTISTE FAUL and EMMA LEGER FAUL property in Section 23, Township 8 South, Range 3 East, as per Plat of Survey attached to Act of Partition recorded on November 30, 1983, as Original At No. 681949 in C.X. X-24, page 260, Recorder's Office, St. Landry Parish, Louisiana, LESS AND EXCEPT the West 946.56 feet of said Tract 3,

the property herein conveyed being also described as follows, to-wit:

Commencing at the Southeast (SE) Corner of Tract Three (3) of the Partition of the JOHN BAPTISTE FAUL and EMMA LEGER FAUL property in Section 23, Township 8 South, Range 3 East, as reflected by Plat of Survey attached to Act of Partition recorded on November 30, 1983, as Original Act No. 681949 in C.B. X-24, page 260, Recorder's Office, St. Landry Parish, Louisiana; from said point of commencement, go South 89°, 54′ 30″ West a distance of 966.04 feet, thence go North 0° 04′ East a distance of 215.6 feet, more or less, to the North line of said Lot 3, thence go North 89° 54′ 30″ East a distance of 928.84 feet, more or less, to the Northeast (NE) Corner of said Tract 3, thence go South 9° 43′ 40″ East a distance of 218.7 feet, more or less, to the point of commencement.

It is expressly understood and agreed that LESLIE FAUL, Vendor herein, also transfers, sells and conveys unto MRS. LOUELLA FAUL BENSON, Vendee herein, all of that certain undivided one-tenth (1/10) interest received by said LESLIE FAUL in and to oil, gas, minerals and mineral rights in and to the tract of land partitioned into five (5) tracts of 9.37 acres each by the heirs of JOHN BAPTISTE FAUL and wife, EMMA LEGER FAUL, by Act of Partition recorded on

November 30, 1983, as Original Act No.681949 in C.B. X-24, page 260, Recorder's Office, St. Landry Parish, Louisiana, subject to the following:

(1) Excluded from this sale shall be the interest of said LESLIE FAUL in and to all minerals and mineral rights on that portion of said 46.85 acre tract which is pooled with and known as the EDWIN COX PRODUCTION;

(2) Vendor, LESLIE FAUL, reserves an undivided one-half (½) mineral royalty interest in and to said one-tenth (1/10) interest in and to minerals which may be produced from the 46.85 acre tract remaining ouside of the portion of said tract which is pooled with and known as the EDWIN COX PRODUCTION.

Vendor, LESLIE FAUL, does further transfer and convey unto MRS. LOUELLA FAUL BENSON, Vendee herein, and her heirs and assigns, any and all rights, title and interest he has in and to that servitude of passage twenty (20) feet in width commencing on Louisiana Highway #343 and lying adjacent to the Southerly boundary of said Tract Three (3) of said Partition of JOHN BAPTISTE FAUL and EMMA LEGER FAUL, and running in an Easterly direction along the Southerly boundary of said Tract 3 a distance of 946.56 feet.

The Vendor did further declare on oath that he acquired title to the hereinabove described property by inheritance from his father and mother, JOHN BAPTISTE (or "Batiste") FAUL and MRS. EMMA FAUL, born Leger, and by partition, first with his co-owners as to said Tract 3, and then by partition of said Tract 3 with MRS. LOIS BEARB.

The parties hereto declare that no title opinion or examination has been requested or rendered in connection with this

transaction, and appearers agree to hold the undersigned Notaries Public harmless in the premises.

TO HAVE AND TO HOLD the hereinabove described property unto the Purchaser and her heirs and assigns forever, with full warranty of title.

Taxes have been paid for previous years; taxes for 1984 and thereafter will be paid by Vendee.

And further came and appeared JOSEPH L. BENSON, who, being first duly sworn, deposed and said:

That he is the husband of MRS. LOUELLA BENSON, born Faul, the Vendee in the above and foregoing instrument; that he has read the same; that all the allegations of fact therein contained are true and correct, appearer hereby acknowledging that his said wife is purchasing the said property with her separete and paraphernal funds under her separate and personal administration for her separate and paraphernal estate; that, accordingly, appearer does hereby waive and relinquish any and all rights, title, claims and interest which he owns or may own in and to the hereinabove described property in favor of his said wife and her heirs and assigns.

THUS DONE AND SIGNED at my office in Sulphur, Louisiana, this 5th day of March, 1984, in the presence of me, Charles C. Broussard, a Notary Public, duly commissioned and qualified, in and for the Parish of Calcasieu, State of Louisiana, therein residing, and in the presence of Norma B. Broussard and Sandra Britnell, competent witnesses, who

hereunto sign their names with said Vendor and me, Notary after due reading of the whole.

WITNESSES:

/s/ Norma B.Broussard

/s/ Sandra Britnell

/s/ Leslie Faul
Leslie Faul, Vendor

BEFORE ME:

/s/ Charles C. Broussard
Charles C. Broussard,
Notary Public

THUS DONE AND SIGNED at my office in Opelousas, Lousiana, this 4th day of September, 1985, in the presence of me, Lawrence B. Sandoz, III, a Notary Public, duly commissioned and qualified, in and for the Parish of St. Landry, State of Lousiana, therein residing, and in the presence of Bridget H. Fontenot and Lynda R. Doucet, competent witnesses, who hereunto sign their names with said Vendee and me, Notary, after due reading of the whole.

WITNESSES:

/s/ Bridget H. Fontenot

/s/ Louella F. Benson
Mrs. Louella Faul Benson, Vendee

/s/ Lynda R. Doucet

/s/ Joseph L.Benson
Joseph L. Benson, husband of Vendee

BEFORE ME:

/s/ Lawrence B. Sandoz, III
Notary Public

State of Virginia
County of Fairfax

Subscribed and sworn to beefore me this 3rd day of March 1986
by Joseph L. Benson.
My commission expires: December 10, 1989

/s/ Linda D. Kersse
NOTARY PUBLIC

ACT OF PARTITION

STATE OF LOUISIANA :
PARISH OF ST. LANDRY :

BE IT KNOWN, that before us, the undersigned Notaries Public, on the dates and at the places indicated, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared

MRS. LOUELLA FAUL BENSON, born Faul, wife of Joseph L. Benson, a resident of Alexandria, Virginia,
whose mailing address is: 6432 Montrose Street
Alexandria, Virginia 22312,

and

MRS. EURA FAUL GRANGER, born Faul, legally divorced from Alvin Granger, a resident of Calcasieu Parish, Louisiana,
whose mailing address is:
Sulphur, Louisiana 70663,

who, being each first duly sworn, deposed and said that:

WHEREAS, appearers are the owners in common, in the proportions of an undivided one-half (½) interest each, of the hereinafter described tract of property acquired by them in an Act of Partition between the heirs of JOHN BAPTISTE FAUL and EMMA LEGER FAUL which was recorded on November 30, 1983, as original act No. 681949 in C.B. X-24, page 260, Recorder's Office, St. Landry Parish, Louisiana, said tract of property being described as follows, to-wit:

Tract 4, containing 9.37 acres, in Section 23, Township 8 South, Range 3 East, St. Landry Parish, Louisiana, said tract having a front of 211.5 feet on Louisiana Highway #343 and running back in an Easterly direction 1912.6

feet on its northern boundary line and 1949.1 feet on its Southern boundary line, and with its rear or Easterly boundary line being 214.5 feet, said property being more fully shown on plat attached to the Act of Partition hereinabove mentioned.

AND WHEREAS, appearers no longer wish to remain as owners in indivision thereof and desire to amicably divide the said property between themselves, and to accomplish their mutual wishes and desires appearers have agreed that henceforth each shall own the following described property, to-wit:

* * * * *

* * * to the best of their knowledge and belief the same is subject to no liens or encumbrances whatsoever, and they do further agree that, if there are any omissions or errors in the descriptions hereinabove recited, they do hereby bind themselves, their heirs and assigns to correct the same when called upon so to do.

And the parties hereto did further declare and acknowledge that no title examination or opinion has been requested or rendered in connection with this transaction.

THUS DONE AND SIGNED at Sulphur, Louisana, this 2nd day of March, 1984, in the presence of me, Charles C. Broussard, a Notary Public, duly commissioned and qualified, in and for the Parish of Calcasieu, State of Louisiana, therein residing, and in the presence of Norma B. Broussard and Richard Lee Tharp, competent witneses, who hereunto sign

their names with said MRS. EURA FAUL GRANGER and me, Notary, after due reading of the whole.

WITNESSES:

/s/ Norma B. Broussard

/s/ Richard Lee Tharp

/s/ Eura Faul Granger
Mrs. Eura Faul Gfranger

BEFORE ME:

/s/ Charles C. Broussard
Charles C. Broussard, Notary Public

PARTITION
Recorded November 30, 1983

That certain parcel of land with improvements thereon and all of the rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging or in anywise appertaining situated in the

PARISH OF ST. LANDRY, STATE OF LOUISIANA, UNITED STATES OF AMERICA, IN ACADIANA

located at Coulee Croche, Lne, in Section 23 Township 8 South, Range 3 East of the said Parish of St. Landry, Louisiana.

Bounded as follows:

> Northerly by Mr. Ellis Jos Richard or assigns Southerly by Oday Treahan, heirs or assigns Easterly by Mrs. Ferriol Leger, or assigns Westerly by La. Hwy 343 (State of Lousiana)

CF Acts 177,994; 171, 006; 190,446 Records of St. Landry Parish, Louisina

This tract of land contains 47.46 acres of land more or less as per old measurements of record in the Courthouse at Opelousas, Louisiana.

This tract is more fully shown and depicted on a Plat of survey by Mr. Morgan J. Goudeau, Opelousas, La. dated 11/20/81, designated as Project 2197 a copy of which is annexed hereto and made a part hereof, and which plat divides the estate of Mr. and Mrs. J.B. Faul, firstly hereinabove described into five tracts of 9.37 acres each.

Appearers further declared that each sibling of Mr. and Mrs. J.B. Faul has been sent and placed into an undivided 1/10th

each, the family of the said decedents consisting of 10 direct descendants, and since Mr. Lester Faul's interest vests in his children, each of his children were sent and placed into possession of an undivided 1/5th of his 1/10th, which they inherited by representation, for a total of 10/10ths or 100% of the whole, and that they no longer wish and desire to remain owners in indivision thereof, and desire to amicably divide the same among themselves, and have agreed to accomplish that purpose by causing the above plat of survey to be made of the estate, dividing same into Five (5) Tracts of same acreage in each.

In order to further accomplish their mutual desires, the parties have caused the said tracts to bear the inscriptions of two heirs or sets of * * * *

WARRANTY DEED

STATE OF LOUISIANA :
PARISH OF LAFAYETTE :

BE IT KNOWN, that before us, the undersigned Notaries Public, duly commissioned and qualified, in and for the Parish/ County, and State hereinafter stipulated, and in the presence of the undersigned competent witnesses, personally came and appeared

1. Mr. Leslie Faul
2. Mrs. Eura Faul Granger
3. Mrs. Grace Izena Faul Kidder
4. Mr. Lloyd J. Faul
5. Mr. E.J. Faul
6. Mrs. Lois Faul Bearb
7. Mrs. Janelle Faul Lorrain
8. Heirs of Mr. Lester Faul who are:
    1. Mrs. Iona Faul Weiland
    2. Mr. David Faul
    3. Ms. Priscilla Faul Royer
    4. Ms. Celeste Faul
    5. Mr. Lester Faul, Jr.
9. Harvey Faul

who jointly and severally declared that for the consideration hereinafter mentioned, they do, by these presents, sell, transfer, assign, convey and deliver, with full guarantee of title and free from all encumbrances and with subrogation to all of their rights and actions of warranty against previous owners unto

> MRS. LOUELLA FAUL BENSON, born Faul, wife of Joseph L. Benson, herein purchasing with her separate aned paraphernal funds under her serparate and personal administration for her separate and paraphernal estate,

the following described immovable items of propertry, to-wit:

1. The main and only residence and home of the late Mr. and Mrs. J.B. Faul, at Coulee Croche, Louisiana

2. The Dairy Building located on the same Estate of Mr. and Mrs. J.B. Faul

3. The Barn also situated on the Estate of Mr. and Mrs. J.B. Faul

the said house, the Barn, and the Dairy Building being all located on the Eastern or Back portion of Tract Numbers 3 and 4, as reflected by said Plat of Survey of the Faul Partition.

And into these presents personally came and appeared MR. JOSEPH L. BENSON, husband of Louella Faul Benson, who takes cognizance of this act of sale, and declares that the property purchased herein forms no part of the community regime between himself and the said Mrs. Louella Faul Benson, and that he has no interest whatsoever therein, and that the said property is being acquired with the separate and paraphernal funds of his wife, under her separate administration and control.

These items of movable property are located on a piece of real esteate, formerly owned by Mr. and Mrs. J.B. Faul, in the Parish of St. Landry, Lousiana, in Section 23 Township 8 South Range 3 East of the Said Parish of St. Landry and the State of Louisiana, which total acreage prior to division consisted of 47.46 acres of land, more or less, and as more particularly depicted on a plat of said property of record in the Parish of St. Landry, Louisiana, duly recorded with an act of Partition among the heirs of the late Mr. and Mrs. J.B. Faul. Said plat was prepared by Mr. Morgan J. Goudeau and is dated 11/20/81.

And into these presents, personally came and appeared Mrs. Louella Faul Benson, accepting and purchasing the same for herself, her heirs and assigns and acknowledging possession and delivery thereof.

No title examination was made and none was requested; however, all of the appearers herein declare that they have not previously sold or alienated their rights, titles and interests in the movable items of property hereinbefore described.

It is understood by the vendee herein that the Barn, subject of this sale, encroaches approximately 6 feet on Tract No. 2, said plat of survey and Partition among the Faul Heirs, and that the said vendee is granted a period of One Year from date of recordation hereof to remove same therefrom at her expense.

This sale is made and accepted for and in consideration of the sum and price of EIGHTEEN THOUSAND EIGHT HUNDRED AND NO/100THS ($18,800.00) Dollars, Cash in hand paid, for which acquittance is herein granted.

The purchaser dispenses the undersigned Notaries with the certificate required by The Civil Code of Louisiana and with the production of Tax receipts required by law.

Done and passed at my notarial office in the Parish of Lafayette, Louisiana, on this 3 day of February 1984 AD.

Witnesses:

1. /s/ James xxx Faul

2 /s/ Nellie C. Faul

/s/ E.J. Faul
E.J. Faul

/s/ [Illegible]
Notary Public, Lafayette Parish, Lousiana

STATE OF LOUISIANA
PARISH OF JEFFERSON

Done and passed at my notarial office in the City of xxxxxx, Louisiana, on this 30th day of January 1948AD in the presence of the undersigned competent witness and me, Notary, after due reading of the whole.

Witnesses:

1. /s/ [illegible]

2. /S/ [illegible]

/s/ Mrs. Janelle Faul Lorrain
Mrs. Janelle Faul Lorrain

/s/ George Thomas xxx
Notary PUblic

STATE OF LOUISIANA
PARISH OF ST. LANDRY

Done and passed at my notarial office in the City of Opelousas, Louisiana, on this 11th day of January 1984 AD in the presence of the undersigned competent witnesses and me, Notary, after due reading of the whole.

Witnesses:

1. /s/ Jenita Grande

2. /s/ Juliiette C. Gordeau

/s/ Mrs. Grace Izena Faul Kidder
Mrs. Grace Izena Faul Kidder

/s/ C. Kenneth Dshotel
Notary Public

STATE OF LOUISIANA
PARISH OF CALCASIEU

Done and passed at my notarial office in the City of Sulphur, Louisiana, on this 9th day of January 1984 AD in the presence of the undersigned competent witnesses and me, Notary, after due reading of the whole.

Witnesses:

1. /s/ Norma B. xxxx

2. /s/ [illegible]

/s/ Mrs. Eura Faul Granger
Mrs. Eura Faul Granger

/s/ Charles Broussard
Notary Public

STATE OF LOUISIANA
PARISH OF ST. LANDRY

Thus done and passed at my notarial office in the City of Opelousas, Louisiana, in the presence of the undersigned competent witnesses, who signed with the appearer and me, Notary, after due reading of the whole, on this 11th day of the month of January 1984 AD.

Witnesses:

1. /s Juliette C. Gordeau

2. /s/ Jenita Grande

/s/ Mrs. Lois Faul Bearb

/s/ C. Kenneth Deshotel
Notary Public

STATE OF LOUISIANA
PARISH OF ST. LANDRY

Thus done and passed at my notarial office in the City of Opelousas, Parish of St. Landry, State of Louisiana in the presence of the undersigned competent witnesses, who signed with the appearer and me, Notary, after due reading of the whole.

Witnesses:

1. /s/ Bridget H. Fontenot

2. /s/ Lynda R. Doucet

Louella Faul Benson
Mrs. Louella Faul Benson

/s/ Lawrence B. Sandoz, III
Notary Public

STATE OF LOUISIANA
PARISH OF LAFAYETTE

Done and passed at the Parish of Lafayette at my notarial office in the City of Lafayette on this 3 day of February 1984 AD in the presence of the undersigned competent witnesses who signed with the appearers and me, Notary, after due reading of the whole.

Witnesses:

1. /s/ [illegible]

2. /s/ Paul Wayne Royer

/s/ David Faul
David Faul

/s/ Iona Faul Weiland
IONA FAUL

/s/ Lester Faul Jr.
LESTER FAUL JR.

/s/ Celeste Faul
CELESTE FAUL

/s/ Priscilla Faul Royer
PRISCILLA FAUL

STATE OF VIRGINIA
COUNTY OF FAIRFAX

Done and passed at my notarial office in the City of Vienna, County of Fairfax, State of Virginia, in the presence of the undersigned competent witnesses who signed with the appearer and me, Notary, after due reading of the whole.

Witnesses:

1. /s/ Mary Carol Crouse

2. /s/ Doris Connelly

/s/ Lloyd Faul
Mr. Lloyd Faul

/s/ Ann S. Weilly
Notary Public
My Commission Expires
January 2, 1987

STATE OF LOUISIANA
PARISH OF ST. LANDRY

Thus done and passed at my notarial office in the Parish of St. Landry, State of Louisiana, and signed by Harvey Faul, in the presence of the undersigned competent witnesses, and me, Notary, after due reading of the whole.

Witnesses:

1. /s/ Suzanne Kerner

2. /s/ [illegible]

/s/ Harvey Faul
Harvey Faul

Lou M. Porter
Notary Public

[signed on this 4th day of September 1985]

STATE OF VIRGINIA
COUNTY OF FAIRFAX

Thus done and passed at my notarial office in the City of Alexandria, County of Fairfax, and signed by Mr. Benson in the presence of the undersigned competent witnesses and myself, Notary Public, after due reading of the whole.

Witnesses:

1. /s/ [illegible]

2. /s/ [illegible]

/s/ Joseph L. Benson
Mr. Benson

/s/ [illegible]
Notary Public
My commission expires
Oct. 1987

PLAINTIFF'S EXHIBIT NO. 7

STATE OF LOUISIANA :

WARRANTY DEED

PARISH OF ST. LANDRY :

BE IT KNOWN, that before us, the undersigned Notary Public, on the dates and at the places indicated, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared

> HARVEY J. FAUL, (now legally divorced from Betty Zerangue), a resident of Cankton, St. Landry Parish, Louisiana, hereinafter referred to as "Vendor",

who being first duly sworn, declared that, for and in consideration of the sum and price of TWENTY-THOUSAND DOLLARS and no/1000 ($20,000.00) DOLLARS, cash, receipt of which is hereof acknowledged and full acquittance granted therefor, he does hereby granted, bargain, sell, convey, transfer, assign, set over, abandon and deliver, with all legal warranties and with full substitution and subrogation in and to all the rights and actions of warranty which vendor has or may have against all preceding owners and vendors, unto

> MRS. LOUELLA FAUL BENSON, born Faul, wife of Joseph L. Benson, herein purchasing with her separate and paraphernal funds under her separate and personal administration for her separate and paraphernal estate, hereinafter referred to as "Vendee', whose mailing address is: 6432 Montrose Street, Alexandria, Virginia 22312,

here present, accepting and purchasing for herself and her heirs and assigns, and acknowledging due delivery and possession thereof, all and singular, all of Vendor's undivided interest,

believed to be an undivided one-tenth (1/10) interest, in and to the following described property situated in the Parish of St. Landry, State of Louisiana, to-wit:

A tract of land containing 47.46 acres, more or less, in Section 23, Township 8 South, Range 3 East,

> said property fronting on La. Hwy. #343 a distance of 1,079 feet on its West side, the north line of said property being a distance of 1,798.6 feet, the East line of said property being a distance of 1,095 feet, and the South line of said property being a distance of 1,984.9 feet,
>
> said property being bounded on the West by la. Hwy. #343, on the North by property now or formerly owned by ELLIS JOS. RICHARD on the East by property now or formerely owned by MRS. FERRIOL LEGER, and on the South by property now or formerly owned by ODAY TRAHAN.
>
> (It is expressly understood and agreed that Vendor retains and does not sell ½ (one-half) of his undivided interest in the oil and mineral rights under the hereinabove described property, without the right to use the surface of the property for any purpose whatsoever, also precluding the right to dig for pea gravel. Vendor retains and does not sell his undivided interest in the house and other improvements on the above described land. The present producing property is excluded from this sale (Cox). Vendor gives to Vendee exclusive right to lease above property and all lease money or rentals will be for vendee.

The parties hereto do further declare and acknowledge that

a Mortgage Search found no mortgages, judgments, liens, or encumbrance of any kind, on subject property on Sept. 17, 1982.

The Vendor did further declare on oath that he acquired interest in the title to the hereinabove described property by inheritance from his father and mother, JOHN BAPTISTE (of "Batiste") FAUL and MRS. EMMA FAUL, born Leger.

TO HAVE AND TO HOLD the hereinabove described property unto the said Purchaser and her heirs and assigns forever.

Taxes have been paid for previous years; taxes for 1982 will be paid by Vendee on undivided interest herein purchased.

THUS DONE AND SIGNED at my office in Sunset, Louisiana, this 6 day of July, 1982, in the presence of me, Estelle Burleigh, a Notary Public, duly commissioned and qualified in and for the Parish of St. Landry, State of Louisiana, therein residing, and in the presence of Cheryl Benoit and Lolita Henry, competent witnesses, who hereunto sign their names with said HARVEY J. FAUL and me, Notary, after due reading of the whole.

W I T N E S S E S:

Cheryl Benoit

Lolita Henry

Harvey J. Faul

Harvey J. Faul, Vendor

Sworn to and subscribed before me this 6th day of July 1982

BEFORE ME: Estelle Burleigh

Notary Public St. Landry Parish

******

THUS DONE AND SIGNED at my office in Sunset, this 6 day of July, 1983, in the presence of me, Estelle Burleigh, a Notary Public, duly commissioned and qualified in and for the County of St. Landry, state of Louisiana, (but residing in the State of Virginia, Fairfax County) in the presence of Cheryl Benoit and Lolita Henry competent witnesses, who here unto sign their names with said MRS. LOUELLA FAUL BENSON and me, Notary, after due reading of the whole.
W I T N E S S E S:

Cheryl Benoit

Louella F. Benson

Mrs. Louella F. Benson,
Vendee

Lolita Henry

Sworn to and subscribed before me this 6th day of July 1983.

BEFORE ME: Estelle Burleigh

Notary Public, St. Landry Parish

PLAINTIFF EXHIBIT NO. 6

Sulphur, La.
Dec 14, 1983

Dear Louella,

Enclosed is the "Act of Partition" between Lois and I. It does not contain all you wanted, but it does fulfill our agreements of Oct 12 & supplement of Nov. 21. It is also common to servitude of passage agreements in St. Landry Parish. If you don't want the house and improvements under those conditions, the next owner will have to live under the same agreement.

If you can accept this notify me in writing and I will execute the warranty deed for the land and "Bill of Sale" for the improvements (after you send the money) If you refuse I will send back your money for the land and consider another bid.

This is all I can do for you and there is no need for angry phone calls.

Leslie

PLAINTIFF'S NO

March 5, 1984

Dear Louella,

Enclosed are the keys to your house and documents which should need no explanation.

I have this date signed the warranty deed for the east side of tract 3. Mr. Broussard will mail you this along with Eura's act of partition this date.

By now you should have received the warranty deed for the house and improvements. It is complete except for your signature and Harvey's. He refused to sign when it was presented to him and told David you were not ready for him to sign. By the time you receive this letter, all the heirs who have signed will be paid off. I will send yours as soon you notify me that both you and Harvey has signed.

I now consider the east part of tract 3 and the house and improvements to be yours. Please notice that the insurance on the house runs out April 4th.

My duty as executor will be finished after I write your check and Harvey's.

Leslie

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* * * *

sworn, testified on his oath as follows,to wit :

THE COURT: Proceed.

DIRECT EXAMINATION

BY MRS. BENSON:

Q Mr. Higgins, could you give us your name, your title and who you work for?

Charles M. Higins. I'm director of planning and design for the Department of Transportation in Louisiana.

Q And how long have you worked for the Department of Transportationin that position?

A In that position, about three and a half years.

Q I see. And by that, you are in charge of such things as drainages and obstructions in public drainages?

A The people in our hydraulic section work for me, yes, ma'am, to that extent.

Q Do you recognize this exhibit?

A Yes, I do. It's a letter that I wrote to you.

Q What is the date on there, Mr. Higgins?

A June 13th, 1984.

Q How did that letter come about, do you recall?

A You had contacted me by telephone, I believe, maybe telegram, before that by telephone, telling me you had problems with drainage over by some property that you owned.

Q And where was that property?

A In the Lafayette District — I don't really recall the number of the highway.

Q By Lafayette District, does the Lafayette District include St. Landry Parish?

A Yes, it does.

Q I see. And do you recall what I asked you or what I wrote you?

A Not completely, but to the extent that it involved drainage on this highway in front of some property which belonged to you and, I believe, some other heirs were involved.

Q Right. But do you recall if the nature of my complaint, of my reason for calling you, was the obstruction in the public ditch?

A I believe that is what you told me, as I recall.

Q Would you be kind enough to read the contents of the letter?

MRS. BENSON: I think that would be the quickest.

A "Dear Mrs. Benson: Please refer to your letter of May 24th, 1984 concerning the action which the department intends to take to assure that the public highway ditch in front of your property is not obstructed. In accordance with our previous telephone conversations, I have been informed by Mr. John LeBlanc in our Lafayette district office that the person who constructed the driveway in question has agreed to install a pipe under the driveway sufficient in size to assure adequate transmission of the water flow. Mr.LeBlanc also informs me that the pipings installed parallel to the driveway drain water

into the public ditch rather than away from the public ditch, so this should cause no inconvenience to you nor any flooding to your property. By copy of this letter I am requesting the district office to answer your question concerning state funded projects which may be forthcoming near the Faul estate. I hope these arrangements are satisfactory and appreciate your interest in this matter. Yours very truly, Charles M. Higgins." At that time, my title was assistant chief engineer for highways.

Q And what is your title now ?

A Director of planning and design.

Q I see. Now, I notice in the second paragraph you state that in accordance with our previous conversation. Were you referring to you and me?

A Yes, ma 'am. I believe we had talked several times.

Q Did you state in there that you were informed by Mr. LeBlanc — who is John LeBlanc?

A John LeBlanc was, and I believe still is, the district maintenance engineer for the Lafayette District.

Q And Mr. LeBlanc represented to you that the person who put the obstruction in the public ditch would be willing to put a culvert to remove it, in effect put a culvert to let

* * * * *

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* * * *

south? I meant the north.

THE COURT: I thought we were talking about the —

MRS. BENSON: It's the north ditch next to the old Faul Road.

THE COURT: So if the road through is not restored, you don't need both ditches, you just need one ditch, right?

MRS. BENSON: This is just what I was driving at. This is just what I was trying to explain.

If the old road is not restored and if the Court makes her correct the drainages next to the road she created — in other words, if the Court makes her fix her man-made ditches next to her two passages, then both ditches would have to be opened up all the way. She just designed it to drain on me. It would have to be opened up all the way to drain into Highway 343 as it used to, and it would have to be kept open.

THE COURT: Let me ask you this. If the defendants would not be required to restore the old road and the new road would be allowed to remain corrected or whatever or something, would opening two ditches on both sides of the new road be all that's required? In other words, the north ditch on the old road wouldn't have to be reopened then if you don't restore the old road, is that what you're saying? You'd only need a ditch there if that road is put back?

MRS. BENSON: I'm of the opinion I don't think it can be done that way, but I'm not an engineer. Now my engineer told me it could be corrected that way, and I would have to consult with him as to how to do it, but —

THE COURT: In any event, in any case, we need some new ditches if the old road is restored or if the new road is going to be the one that is maintained.

MRS. BENSON: Very definitely.

THE COURT: I follow you on that. Okay, that's one, two, three, four. Is there anything else that would be required to alleviate the drainage problems on your land or these four points, one way or the other, should cover it?

MRS. BENSON: Well, if she would open them up so that it would drain into Highway 343 — the way she designed them now, they're designed to drain on me on the front part where it's ponding on the right-hand side —

THE COURT: I say, would these four things we just talked about, if they were done and done properly, does that cover it? Would that dry out your land?

MRS. BENSON: I think it would. The only * * * *

PLAINTIFFS EXHIBIT NO. 12

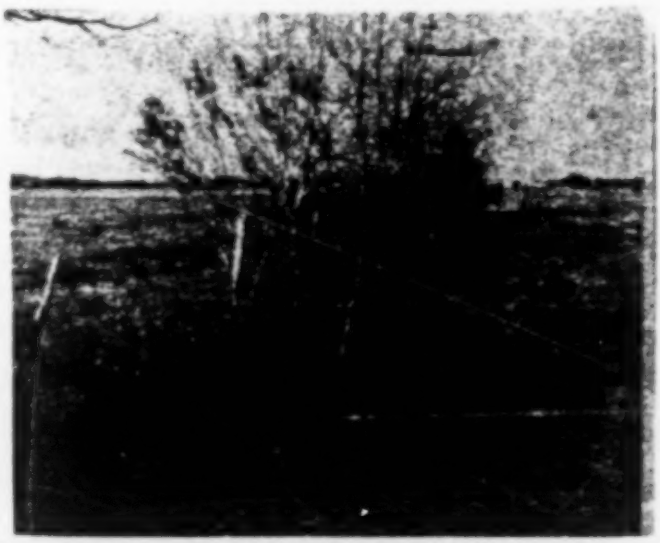
March 26, 1982

Dear Louella,

The first survey showing a 10' easement was rejected not by "some" but by you. It was promptly dropped and you were furnished a copy of the parallel and equal division. The surveyor was not required to show details of improvements only the last division. The flags run even with the fence Pap had on the south side of the road. The straight line runs through the yard and between the house and the 2 posts supporting the south porch. Instead of spending money on another survey why don't you go see for yourself.

Leslie

cc: Mr. Savoie
& all the heirs



Old Faul Road and fence in ditch dividing Trs. 3 & 4, according to Leslie's letter of 3/26/82

PLAINTIFF'S EXHIBIT NO. 52

6342 Montrose Street
Alexandria, Va. 22312
Nov. 20, 1983

Presiding judge
27th Judicial District
Parish of St. Landry
P.O. Box 750
Opelousas, La. 70750

RE: 89,191-B
Ewell J. Faul et al vs.
Louella F. Benson

Dear Sir:

In another good faith effort I am offering the following:

In Sept. 29 letter Mr. Grubbs said Leslie plans to purchase E.J.'s share. Since Leslie now again wants the house, I would propose that he purchase it and take the rear of tract 3 and the rear of tract 1 under the conditions that I could have the two back halves of tracts 4 and 5 together. Under those conditions I would give him an easement. That would apparently please Eura because from the enclosed correspondence she now wants the front 4 acres which are certainly far more valuable than the rear land. Should Leslie not go for that then I would reverse the coin with exact conditions including the road and easement and I would buy the house. I would only consider taking the rear land under those conditions. I suffer from arthritis and I cannot build a house on tract 1 in the drainage area because of the humidity. (The minerals would remain undivided and price of improvements can be negotiated.) If rejected I reserve my rights to bid and for a trial.

I am copying the heirs who would be involved in this proposal or who had signed the Oct. 12 proposal as described above. It is important to me to have my land in one piece and

I would beg the Court to please consider that. The offer to take two back tracts of 4 and 5 and to give up on the house under the conditions specified represents a considerable concession in my opinion. (Under my proposal the owner of the back half of tract 1 would get the $3,000.00 credit mentioned in their first proposal because of the low flooded land.) The alternative I offered also represents a substantial compromise by me because I have spent $20,000. for an undivided share. I can no longer consider joint ownership.

In the meantime I am very much preparing for trial on Dec. 14 and I will be making additional filings before long. Should my proposal be accepted, I would suggest that Plaintiffs respond promptly.

Respectfully sumitted,
Louella F. Benson

Encls. CC: Eura Granger
Grace Kidder
Lois Bearb
Leslie Faul
Janell Lorrain

Highway 343
#89, Alt-B
Leslie's children
#300 credit
Hidden Corner
#2,000 credit
Leslie
#3,000 credit
Beard
Fowl Road
4
3
2
1
Leslie
House
Ezra Granger's property after
Lloyd
Fowl
Benson
proposed
if Leslie rejects proposal I would take road off of 89 and I separate the house and land for the other it would be 1½ acres
Wooded area and lane
PLAINTIFF'S EXHIBIT
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TR-108 * * * *

about?

MRS. BENSON: I'm referring to Defendant's Exhibit B.

THE COURT: Okay, tell him —

BY MRS. BENSON:

Q When you deepened the ditches, do you put some type of chemicals in the ditches to deepen them?

A Of course not.

Q Well, what it this that looks like water here?

A Looks like a little bit of water standing.

Q Water standing here.

THE COURT: Have you described for him what area this is —

BY MRS. BENSON:

Q This is in front of Tract 4, okay?

THE COURT: I don't know if Tract 4 means anything to him.

MRS. BENSON: Tract 4 is my property of the Faul estate.

A Where is that located?

BY MRS. BENSON:

Q It's facing Highway 343 at the ditch you maintain. Okay. Now —

A I'd like to see the plat of the property.

Q Certainly.

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* * * *

TR-118

MRS. BENSON: Let me see, Your Honor.

THE COURT: Well see in a hurry.

BY MRS. BENSON:

Q I believe you admitted that water drains into Highway 343, from the Faul estate into Highway 343 —

THE COURT: No, he didn't say that. He said it could. Are you talking about on top of the surface of 343?

THE WITNESS: Well, it drains from the little ditch along the roadway.

THE COURT: It will get on the highway?

THE WITNESS: That's correct.

MRS. BENSON: Into Highway 343.

THE WITNESS: Into the ditch, yes.

THE COURT: Okay, next question.

MRS. BENSON: That's all I have, Your Honor.

THE COURT: Do you have anything else?

MR. BRANDT: Just a couple of questions, Your Honor, very brief.

RE-DIRECT EXAMINATION

BY MR. BRANDT:

Q What was the —

MR. BRANDT: Can we just introduce this?

THE COURT: Yes, I think it should be introduced. You've talked about it, both of you, so much that no one can make any —

MRS. BENSON: Your Honor, I will object to that.

THE COURT: Because why?

MRS. BENSON: Because it was never furnished to me before and it was not listed.

THE COURT: Well, okay. All I can describe for the record is a very detailed elevation scale made by the State of Louisiana, but if you object, objection sustained.

Okay, next question.

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TR-115
this letter, Your Honor?

THE COURT: What is this?

MRS. BENSON: It's a letter to Mr. Higgins to myself with a copy to Mr. LeBlanc stating specific things pertaining to my complaint to D.O.T.

MR. BRANDT: I don't see the relevance. I'm going to object.

THE COURT: What is the relevance?

MRS. BENSON: It has to do with the obstruction in the public ditch and the drainage pattern.

THE COURT: Haven't we covered that?

MRS. BENSON: Not with this witness, and he was the one who was supposed to report back to D.O.T., to Mr. Higgins.

THE WITNESS: Which I did.

BY MRS. BENSON:

Q Did Mr. Higgins not ask you to contact me to look at the pictures?

A Everything I did was through Mr. Higgins.

Q Would you please answer my question, sir? Did Mr. Higgins not ask you to contact me to look at the pictures of the flooding back in 1984?

MR. BRANDT: That's irrelevant.

BY MRS. BENSON:

Q Maybe I can refresh your recollection.

MR. BRANDT: It's still irrelevant whether Mr. Higgins told this

man to go look at some pictures or not. The man went to the scene and has testified to that.

THE COURT: I would think so. I don't think we need to get into that. I'll sustain the objection.

Anything else?

MRS. BENSON: Yes, Your Honor.

Your Honor, I take my exception to that.

THE COURT: Okay, what is your next question? I only want to cover what was covered on direct.

MRS. BENSON: Yes, Your Honor.

THE COURT: Looks like we've covered it.

BY MRS. BENSON:

Q Mr. LeBlanc, Mr. Higgins, did not he ask you to notify me of any plans you had of any work —

THE COURT: What's the relevance of that? It's the same thing. I don't want to go into that. He went out there and did what he did.

THE WITNESS: And reported to Mr. Higgins. Now if he reported to you or not, I don't know.

MRS. BENSON: Your Honor, please tell me if you won't allow me to go into it, but my reason is the drainages are being changed, altered, to use the best

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property that she owns, is that my understanding?

THE WITNESS: Well, there's one isolated spot which is quite obvious near the homesite, near the ridge just immediately west of the homesite, and there were other areas that are shown that apparently are quite soggy as a result of the lack of drainage. I think that some of the sogginess could resolve itself once the drainage condition would be resolved. I think some of the ponding will resolve itself to some extent, but that additional earthwork may be necessary to eliminate some of that ponding, and the land earthwork that I am estimating, I think, is in my report.

THE COURT: Then some of the other owners, of course, will benefit from eliminating the ponding? The ponding is not all on Mrs. Benson's area, is that correct?

THE WITNESS: No, no, there is some ponding —

THE COURT: You said about a half to one acre?

THE WITNESS: Well, there's an area approximately a hundred fifty feet by two hundred feet or so, a hundred fifty by a hundred fifty feet area in the front of the home. That's one area that is probably the most obvious on the site.

MRS. BENSON: Your Honor, may I enter some pictures?

* * * * *

move, the water Mrs. Bearb is draining in my direction where it cannot move. Do these pictures reflect the ridges there and near towards the dairy in that area?

A Well, it's apparent from these photographs that where the dairy barn is shown in the background that the dairy barn is considerably higher than where the ponded area is, and the water would have a very difficult time draining in that direction. I think the

topographic survey shows that the area near the barn, the dairy barn, was in the twenty-fours, twenty-four-foot elevations, and the area near the ponding areas was near a twenty-three-foot elevation, so it's a foot lower in the ponded areas than it is back up near the dairy barn.

Q Now, on this picture, do you remember the big post with the aluminum on top on Mrs. Bearb's fence at the property line?

A I believe I do.

MRS. BENSON: If I'm allowed to point this out, Your Honor, this picture was taken, obviously, after a rain, and this picture was taken during dry weather.

MR. BRANDT: How do we know, Your Honor?

THE COURT: Well, you're going to testify to that?

MRS. BENSON: That's right, I will, and it's

* * * * *

A No, not on what Mrs. Benson tells me but what the witnesses have said according to the old drainage pattern, because of the state statutes regarding natural drainage. If it's been draining in that area, the natural drainage cannot be altered. The natural drainage patterns cannot be altered.

Q That's your understanding of the law?

A That's my understanding of the law. I understand that's very explicit.

Q Let me ask you a couple of questions about your expenses.

You said that you were going to need seven hundred forty cubic yards of dirt to fill. Can you show me where you're going to put that dirt?

A Okay.

Q As a matter of fact, you said one group of seven hundred and then another place you're going to need two hundred, is that correct?

A Okay. One of the areas was right in here to elevate this area right here so that the natural fall would fall in this — to reinstate the natural fall into this — out of this area here. That's an area of about — let's see, two fifteen by — this is three hundred feet, so it's an area of about — oh, I would say about a hundred by two hundred, somewhere in this area here.

Q And you're going to put dirt in there?

* * * * *

MR. HIGGINS, D.O.T.

* * * if anything was ever done?

THE COURT: No, you can't, because that's hearsay.

MRS. BENSON: May I enter these —

THE COURT: Unless he went out and did something or knows something or saw it done.

MRS. BENSON: May I enter these documents, Your Honor?

THE COURT: The complaint letters?

MRS. BENSON: The complaint letters

THE COURT: Do you have any objection simply for not other hearsay in the letters about what somebody did or said but the fact that the letters were written and the complaints were forwarded?

MR. BRANDT: With that limitation, I have no objection to it.

THE COURT: Be received.

(Whereupon Plaintiff's Exhibits 50-A, B, C, D and E were admitted into evidence.)

BY MRS. BENSON:

Q Mr. Higgins, does D.O.T. use the chemical oust in ditches to kill grass?

A We do use something in some cases to kill weeds. Whether it's oust or not, I don't know. I believe I saw something in a letter from John LeBlanc maybe saying that they

* * * * *

live for many years.

THE COURT: He lived across the road, he said, from the property.

BY MRS. BENSON:

Q During the time you lived there, Mr. Leger, did you happen to notice the Faul Road?

A Yes, I did, the best I can remember.

Q And can you describe to us the Faul Road at that time?

A It was elevated, I would say, about twelve to fourteen inches with small ditches on the side, to the best of my recollection.

Q What kind of surface was on the Faul Road at that time?

A After they drilled that little oil well, they had limestone on it.

Q Okay, and before the limestone, do you recall that was on the road?

A Gravel.

Q Okay. Now, first of all, were there drainage ditches on each side of the road?

A They had some small ditches on the side of the little road.

Q And do you recall what direction the water drained into?

* * * * *

A To the best of my knowledge, most of it towards the road.

Q Towards which road?

A Highway 343.

Q Towards 343.

The other question I have to ask you is do you remember if there was an obstruction in the public ditch?

A They had this big cattle guard, and the best I can remember, it was open on both ends to drain from the road.

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speculative.

THE COURT: I'll sustain the objection. That calls for a conclusion of the witness.

BY MRS. BENSON:

Q Now, you brought up the pipe bridge that you —

MR. BRANDT: Objection, Your Honor. He didn't bring up the pipe bridge on cross examination.

THE COURT: Objection sustained.

BY MRS. BENSON:

Q Mr. Leger, while you didn't live there for a while — Mr. Brandt asked you if you lived away from there for a while and you said yes. While you did not live there, does not your family live in the immediate area and were you not in that area frequently during those years?

Q And you would have occasion to notice as to whether or not there was an obstruction in the ditch or not?

A Well, I didn't make it a point to look at the bridge. I mean, like I told you while ago, the best what I can remember, when the cattle guard was there, it was open; when the old road was there,

it was open where it would drain.

THE COURT: But in the last three years, you've observed that the ditch is not open to drain into the public ditch?

THE WITNESS: Well, when they changed the road place, it changed that, Your Honor.

MRS. BENSON: Thank you very much.

THE WITNESS: Can I say something for the record?

THE COURT: No, not unless you're asked.

THE WITNESS: Good. I just wanted to —

THE COURT: No further questions?

MR. BRANDT: No, sir.

THE COURT: All right, you're excused. (Witness excused)

MRS. BENSON: I'd like to call Mr. Lee Hanks to the stand.

LEE HANKS, having been first duly sworn, testified on his oath as follows, to wit.

DIRECT EXAMINATION

MY MRS. BENSON:

Q Mr. Hanks, could you state your name and address for the record?

A Lee Hanks, Route 2, Box 294, Church Point.

Q Have you lived in the area a long time, Mr. Hanks?

A Yes, ma'am.

Q Along 343?

A I've been living at this present address for approximately twenty-five years.

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compared with a low water flow, and a construction of a culvert at the site of the blockage of the road would in fact alleviate the water flow in that it would direct more water towards Tract 2 and Tract 1 and less water towards Tract 4 and Tract 5 because of the greater hydraulic gradient towards Tract 1 than Tract 5.

Q Mr. Benson, my next question is, suppose it rained a great deal and the ditch got high. With the obstruction in the public ditch, would the water not come on to Tract 4 if there was a great deal of water?

A Depends upon how much water there would be, but there's greater chance, a greater probability, of overflow with that blockage in the road over Tract 4 than it would be if that ditch were open.

Q Mr. Benson, did you travel with me to Louisiana back in 1980 before my father died?

A Yes. I had been here before that.

Q Do you remember that public ditch? Do you remember whether that ditch was opened at the time or closed?

A My recollection, that ditch was open.

Q Now, on the road itself, the new passage, you've traveled on both the new passage and the old road, have you not?

A Yes, I have.

Q Now, as far as the new passage as it exists today — first of all, what is it like, the new passage?

A The new passage is a dirt road covered with grass and has ruts in it at this time of about six inches for several hundred feet in the roadway. As compared to the old Faul Road, the new road is more expensive to keep up because the grass that grows on the

new road grows higher and is more dense than on the old road requiring more frequent treatment, cutting of the grass and avoidance of the ruts, so you have a less — or to put it another way, you have a more expensive road to maintain on the new road as compared with the old road.

Q What would be required to make the new passage and acceptable road or —

A To make the new road equivalent to the old road would require greater compaction —

MR. BRANDT: I'm going to continue my objection. Again, this is exactly what we heard in the case in chief of the plaintiff. It's just a repeating of what her previous expert said. There's nothing in a rebuttal nature.

THE COURT: I tend to agree with you.

Proceed.

MRS. BENSON: I have no further questions.

BY MRS. BENSON:

Q Is that it, Mr. Benson?

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* * * *

A Near or along?

Q Alongside the Faul Road?

A Yeah, I do remember.

Q Was there a ditch on each side of the Faul Road?

A Yes, ma'am.

Q And do you recall what direction the drainage drained into? Do you recall what direction the drainage drained to?

A I don't know exactly. I never stayed to watch where it went, but there's only one way I could see for it to go would be 343.

Q And why is that, Mr. Hanks?

A Because the ditch started in front of the house away from the house and went all the way up to the front, to the highway.

Q Right. Well, you said that the water could only go in one direction — you said there's only one way it could go, I think. Why is that that it could only go in one way? What is your reasoning for that?

A Because of where the house is, it's higher.

Q Than —

A Than the front of it.

Q Okay, thank you. Now, do you recall if at any time the Faul Road — was it gravel at one time or was it something different at any other time? Do you remember that?

A The old road? Best I can remember, roughly, might have been some shells on it at one time.

Q And have you had a chance to look at the area since 1983?

A I did.

Q And is the Faul Road still there?

A No.

Q What is there now? Can you describe it?

A Grass is where the road used to be, cut down. In other words—

Q While you're on that subject, Mr. Hanks, can you identify this picture?

A Yeah, this is the fence line between your property and Mrs. Bearb's property. That looks just about where the road used to be.

Q First of all, could you look at the date of the picture?

A March 26, 1987.

THE COURT: What's the exhibit number marked on there please?

THE WITNESS: Number 68. I can't make out what this last one is.

MRS. BENSON: It's Plaintiff's 68.

BY MRS. BENSON:

Q This particular picture, Mr. Hanks, would you say

* * * *

Q Okay, I just have one or two more questions. Do you recall seeing a cattle guard at the front ditch?

A Yeah.

Q Now, the next question I have for you, if you'll recall, I think it was in early 1986, do you recall walking out in the pasture with me, and do you recall seeing dark spots on certain parts of my land?

A Yes, I do.

Q Do you recall if I took samples of those dark spots?

A Yes, I do.

Q Do you remember where it was, Mr. Hanks?

A It was in different areas. Okay, that would be around in — okay, I got to take my bearings. In this area here and —

MR. BRANDT: Your Honor, If I could impose on him just a second, if I could get up there and see where the dark spots are.

MRS. BENSON: Maybe I could borrow the pictures. Would that help?

THE COURT: Here's a red pen. He can make a circle where you want to identify the areas she took the samples. Just make a little red dot at the different places.

THE WITNESS: This might not be exactly, but

* * * *

them ridges, okay?

Q Well, when —

MR. BRANDT: Your Honor, I object to her interrupting. The man's trying to explain something and she keeps interrupting

THE COURT: Let him finish his answer before you ask the next question.

A Okay, this right here, water stays there most of the time because it —

BY MRS. BENSON:

Q When you say there, what are you referring to, where?

MR. BRANDT: Where he's pointing to on the photograph.

MRS. BENSON: Please let him say. If he points on the photograph—

THE COURT: Just a minute, attorneys, let the witness answer his question.

A I can show you on the map at this point right here. Where the old ditch used to start right along this area here. In other words, the old Faul Road ditch would start in this area going towards 343, but the ditch is not there any more since they removed the road.

THE COURT: Well, let me ask you something. Before on the old road when the ditch was there, would it still leave water standing like this or would it drain all the water?

THE WITNESS: I've never seen any standing there, sir.

THE COURT: Before?

THE WITNESS: Before.

BY MRS. BENSON:

Q Mr. Hanks, I would like to show you some other pictures. Can you identify this picture?

A Yes.

Q Where is that?

A That's your property, near the gate getting into your property.

Q Okay now, does that picture reflect, does that picture show, that it's higher, a ridge in other words?

A Yeah. This is a ridge right here. The house is out of the picture, but the house sits right here.

Q Right. And this picture, this is 24. He has just looked at 24-B, he is now looking at 24. Can you identify the picture, first of all?

A Yes.

Q And does it show a ridge?

A Let's see, get my bearings. This is the — okay. I'm on — let's see, this corner, this corner —

Q Would this picture help you get your bearings? They

* * * *

water is to the right. This is where the old Faul Road used to be. This is where the old Faul Road used to be.

Q Where the warter is standing?

A Yeah, on the right.

Q Okay. Now, the new passage we talked about what kind of surface is it? What's on it?

A Dirt, grass.

Q And have you been on the road after a rain?

A Yes.

Q Have you had difficulty driving on the road?

A Yeah.

Q Okay. Now, I believe you said the new little ditches Mrs. Bearb has next to her new passage, would you say that they're not adequate?

A That's right. They're not adequate to get the water out.

MRS. BENSON: Let's see, I think that's all the question I have. I may have one more. Let me return these pictures.

THE COURT: Are they not able to get the water out because they're not good enough or because of some blockage?

THE WITNESS: In other words, it's blockage, yes, sir.

THE COURT: In other words, they can get to

* * * *

admitted into evidence.)

MRS. BENSON: Your Honor, I believe this one is in the record, but remember when Mr. Hanks testified, he put a little dot here on the side of the house?

THE COURT: On the plat?

MRS. BENSON: On the plat. That's one of the places where he put the dot.

THE COURT: That's in 24-LL.

MRS. BENSON: I believe that's already in the record.

THE COURT: We'll take it again.

(Whereupon Plaintiff's Exhibit's 24-LL was admitted into evidence.)

MRS. BENSON: If you'll recall, you asked me last week what she did with the limestone and stuff that she removed from the old road. This is a picture facing Highway 343 on Mrs. Bearb's land after she destroyed the Faul Road and moved it, and, for the most part, she placed all of the stuff on her property up front here. She elevated the area, and especially —

THE COURT: Took the road down and moved the surface to elevate — looks pretty smooth, like they just smoothed it out.

MRS. BENSON: See, she put a culvert there, not in the public ditch where it was supposed to go but

* * * *

MRS. BENSON: Okay. Line 11 with the question:

"Show me where you put this second.

Well, first of all, did you put a second culvert near my property, and show me where you put it."

Answer: "There was a culvert installed at the end, almost at the end of the new road, that drained into the ditch alongside the road."

Question: "Yes, but it drains — and the way where you put the culverts, it now — it has been draining on me for two years, hasn't it?"

Answer: "No, no, this water goes on me. This water drains on me. It's from my — it's from your property to mine, and the water comes from your property and drains on my property, and that was the purpose of the culvert."

So she admitted that I was supposed to drain on her, only since she moved the road and changed the drainages, she drains on me for three and a half years, so that's the most important part of this, and the part where she had refused to correct the word — that's not important though.

THE COURT: NO..

MRS. BENSON: No.

She also, of course, admitted to me about the road, so we won't enter this.

THE COURT: Fine.

MRS. BENSON: As to the expert of the opposition, Your Honor, I had tried to take his deposition and he didn't appear, and later I had written counsel with objections, but it's a letter from me to counsel, but if I have to enter that, maybe I can do it later.

THE COURT: Well, if this was to take a discovery deposition and they would not produce, that is a discovery matter. You should have taken that up with the magistrate during the discovery period rather than now about the failure to appear.

MRS. BENSON: Well, I will handle it later if they come up with something that I haven't received, for example. I will just simply object.

THE COURT: All right.

MRS. BENSON: And in closing, I would like to say that the drainage, the problems on my property, are getting worse. Mr. Langlinais who testified has not been there for about a year, and the effects of the drainages of the water reverting on me for three and a half years is getting considerably worse. It's obvious, and of course it's far more obvious after a rain, but you can tell the damages it's causing, and if it's not stopped soon, there will be a ditch surrounding my house on the south side and the north side of — well, what I mean by that is the ponding in front will stay there, the front of the house, and then that part on Tract 2 where they're making tracks with the truck, there was never any ditch on either side. If that continues, there will be holes there, so I would have a pond in front, a ditch on the south side and then a ditch in the back of the barn, and not any of that was ever there before. As we've seen in pictures, there are ridges in front and in the back, and there is a low area but it's immediately near the gully, and another low area is at Tract 1, but I think we established that also. The elevation patterns clearly show that.

I feel that in view of their agreements, I have a right to a hard surface road, and I certainly had a right to expect that they would not alter the drainages.

I did a little research this weekend, and I noted that at 694 of the civil code —

MR. BRANDT: Your Honor, I object to her argument.

MRS. BENSON: Maybe I could do it later.

THE COURT: Right now we're just getting testimony, not the law.

MRS. BENSON: Okay, so I can brief you later in closing argument?

THE COURT: I mean, I'll have you all send me something.

MRS. BENSON: Okay.

THE COURT: Does that conclude your testimony on direct?

MRS. BENSON: There's one final thing I noticed.

The day that Mrs. Bearb cut her grass, the day before the trial, I think it was, I noticed that D.O.T. also cut the grass in the public ditch, and my brother Leslie has a culvert at his entrance, but I noticed they left long grass on each side of the culvert at Leslie's property, and there's another culvert on down that might — I'm not sure, but I think it might be obstructed, so the point I'm making is they control the drainage in the public ditch as they want to, as it's convenient to them, just as Mrs. Bearb does.

Now, if it rains a lot and after that grass is cut and with Mrs. Bearb's obstruction in the public ditch, when it rains enough, it will come on my property in front too, so, it effect, my property is entrapped with the front part, the front obstruction, and the private obstructions that Mrs. Bearb has created, and then the back part of my property, in the coulee there's just little passes there. If it rains a lot, I get all that in the back also, so it's a very terrible situation. And, in closing, I'd like to remark on that one picture we entered last week referring to Mrs. Bearb's new south man-created ditch.

The way it's designed, it doesn't meet the old ditch and there is nowhere that it could go but on my land, and the results and the effects, the sogginess, are all there, and, as I said, I personally took the pictures, all the pictures in the record, and there were dark spots where I took the samples, and this is where the truck sunk, and I noticed that D.O.T. used its tracks like that in the public ditch and toxics, waste, and it causes erosion, and that part of my land is really my best land. It's the front tract. It's lthe only part with the front part.

And, as far as that's concerned, their position is that I have a front tract now and why don't I make my own road. Well, when they gave me the agreements, Your Honor, I took that eight, ten

thousand dollar loss and they didn't want the back land, you know. That was a tremendous loss also. Nobody gave me anything, and to create it — they assured me, they agreed, that I would have permanent access, full use to the road as it **[115** was, a hard surface road, and I think it would be very unfair for me to have to build a $20,000.00 road again and be left with all the drainages the way they are.

Thank you, Your Honor.

THE COURT: I want to ask you one question on that and maybe you can give me some quick answers.

In a nutshell, what has to be done, in your opinion, and you can give me an opinion on this, to correct the drainage? I'm not asking about the road situation. I've got a handle on that. What has to be done to correct the drainage problem on your land? One, two, three, that will get it. One.

MRS. BENSON: To correct the drainage problem —

THE COURT: And let' s start at the highway, the public road coming back, all right? One.

MRS. BENSON: There Mrs. Bearb would have to remove the obstruction in the public ditch.

THE COURT: Remove what obstruction?

MRS. BENSON: The dirt obstruction in front of her new passage.

THE COURT: This is where you say was a culvert at one time?

MRS. BENSON: It was open. There was a pipe bridge **[116]** over it.

THE COURT: Cattle guard?

MRS. BENSON: Right.

THE COURT: And it was open before?

MRS. BENSON: Right.

THE COURT: Okay.

MRS. BENSON: And then I believe — you know, we showed pictures of how she's trying to get her front tract without very much of a ditch, if any, so that would have to be opened up as it used to be so that the water could drain on to Tract 1.

THE COURT: Explain that a little bit better.
All right, first we've got to remove the obstruction at the public ditch.

MRS. BENSON: Remove the obstruction in the public ditch.

THE COURT: That's one. Two?

MRS. BENSON: Two, her public ditch in front of her land, she is trying to avoid having any kind of a ditch, very much of a ditch at all. She wants just the nice, green grass there.

THE COURT: You're talking about where the public ditch is?
MRS. BENSON: Yes, Your Honor.

THE COURT: What has to be done there?

[117] MRS. BENSON: That would have to be opened up like the other ditch.

THE COURT: You mean make a ditch out of it?

MRS. BENSON: Right, so the water can flow on which it used to which the elevations show —

THE COURT: First you've got to remove the obstruc-

tion and then you've got to make a ditch out of it, open it up so the water will flow, once it gets there it will flow.

MRS. BENSON: And the elevations clearly show that's the natural drainage and there's a drop there. I think this land is at one or two feet, maybe two.

THE COURT: Three.

MRS. BENSON: Could well be three, I don't know —

THE COURT: No, I'm saying number three.

MRS. BENSON: Oh, number three.

THE COURT: Is there anything else that needs to be done to it?

MRS. BENSON: Well, I think that D.O.T. should clip the grass next to Leslie's culvert on each side. Since they cut the grass everywhere else, I think that they should come out and just let it flow.

THE COURT: Okay now, let's see, I'm only asking about things — D.O.T., that's their problem, * * *

* * * * *

[120] MRS. BENSON: Now —

THE COURT: Are we still on number three?

MRS. BENSON: I don't know what Your Honor's going to do.

THE COURT: Neither does Your Honor at this stage.

MRS. BENSON: But, see, I'm not an engineer. I believe the engineer said that the problem — if the Court makes her reinstall the Faul Road as it was in the contracts, you know, as she agreed, permanent use to the road as it was in 1982, then the ditches along both sides of the Faul Road will have

to be opened up. They're both plugged up, and to drain —

THE COURT: Is the south ditch one of these ditches you're talking about?

MRS. BENSON: Yes, the north ditch and the south ditch next to the old Faul Road.

THE COURT: The south ditch, according to what you say, would have to be opened regardless whether or not —

MRS. BENSON: I believe it will. I don't think it's going to take care of that problem.

THE COURT: Now that's number three. Number four, is the north ditch also —

MRS. BENSON: That's the north. Did I say the south? **[121]** I meant the north.

THE COURT: I thought we were talking about the —

MRS. BENSON: It's the north ditch next to the old Faul Road.

THE COURT: So if the road though is not restored, you don't need both ditches, you just need one ditch, right?

MRS. BENSON: This is what I was driving at. This is what I was trying to explain.

If the old road is not restored and if the Court makes her correct the drainages next to the road she created — in other words, if the the Court makes her fix her man-made ditches next to her two passages, then both ditches would have to be opened up all the way. She just designed it to drain on me. It would have to be opened up all the way to drain into Highway 343 as it used to, and it would have to be kept open.

THE COURT: Let me ask you this. If the defendants would not be required to restore the old road and the new

road would be allowed to remain corrected or whatever or something, would opening two ditches on both sides of the new road be all that's required? In other words, the north ditch on the old road wouldn't have to be reopened then if you don't restore the old road, is that what you're saying? You'd only [122] need a ditch there if that road is put back?

MRS. BENSON: I'm of the opinion I don't think it can be done that way, but I'm not an engineer. Now my engineer told me it could be corrected that way, and I would have to consult with him as to how to do it, but —

THE COURT: In any event, in any case, we need some new ditches if the old road is restored or if the new road is going to be the one that is maintained.

MRS. BENSON: Very definitely.

THE COURT:: I follow you on that. Okay, that's one, two, three, four. Is there anything else that would be required to alleviate the drainage problems on your land or these four points, one way or the other, should cover it?

MRS. BENSON: Well, if she would open them up so that it would drain into Highway 343 — the way she designed them now, they're designed to drain on me and the front part where it's ponding on the right-hand side —

THE COURT: I say, would these four things we just talked about, if they were done and done properly,does that cover it? Would that dry out your land?

MRS. BENSON: I think it would. The only other thing [123] would be, and I think my brother admitted the other day he would open up his drainage, the south drain on his land.

THE COURT: Now is this another point, the south —

MRS.BENSON: It's the south ditch.

THE COURT: This is the south ditch on whose property?

MRS. BENSON: It's on my land and Leslie's land, but his has been obstructed. And there's evidence there — when my father was living he had — at the end of Leslie property, my father had a ditch going all the way from Highway 343 all the way back to the gully, and there's evidence of that from trees there that have grown, but it's not opened up. Now, my engineer shows that that ditch, that south ditch, continues also on the adjoining person's land and he also noted on this plat that there's a ditch at the end of Leslie's property going east/west also, and that could be opened up.

THE COURT: That's two ditches, is that what you say, on Leslie Faul's property.

MRS. BENSON: At the end of his property and at the center of his property.

THE COURT: Okay, I think that covers it.
Okay, we'll now cross examine.

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before 19 — around '82 and beyond.

THE COURT: And before that?

THE WITNESS: Right.

THE COURT: How long were you there?

THE WITNESS: A good while when my father was living there, and I also stayed with my grandfather when he was there.

THE COURT: I think the question is, have you observed any changes in the land recently when you were there, anything different from when you used to be there?

THE WITNESS: Well, it's just that I could see that there was a big collection of water that had stayed on the property, you know.

THE COURT: Can you locate that for us, where it was?

THE WITNESS: Where the water was?

THE COURT: Where the water was located.

THE WITNESS: Especially here, you know. It's like I said, you know, it seemed like when I went on it —

THE COURT: You're talking about in the middle of Tract 4? You see the tracts how they're numbered here, 4, 5, 3, 2, 1?

THE WITNESS: I'll refer to them as tracts.

* * * *

THE COURT: The gravel had set in? I guess gravel had been put there from time to time, or do you know that?

THE WITNESS: Right.

THE COURT: It was a hard top?

THE WITNESS: Right.

BY MRS. BENSON:

Q You would say it was a hard surface road?

THE COURT: Hard gravel, right?

THE WITNESS: Right. I'm not saying they might not have had a hole or two in it, you know, but it was a fairly good road.

BY MRS. BENSON:

Q You mean like pot holes maybe?

At any time, Mark was there any time that the road became anything other than a gravel road that you remember?

A Yes. They changed it to a limestone.

Q Do you remember about when that was?

A That was before they put the well on the property.

Q Okay. Now, when you were there again later, did you notice if that road is still there?

THE COURT: Now you mean like recently, later you say, like when he was there three weeks ago?

Q When you were there three weeks or prior to that since 1983, did you notice if that road Pop had from the house to the Highway 343 was still there?

A Well, I noted that, you know, the road that had been moved, the old road, I noticed that it had been moved, you know, that it wasn't the same road.

Q And let me ask you this. Is it a gravel road now, the new road, or is it a limestone road or what?

A It's dirt now, yeah. It's not limestone or gravel.

Q The other question I had asked you is, do you remember how

my father drained — do you remember if he had, one, if he had drainage ditches on each side of the old road? Do you remember if my father had —

A Right. He did have that on each side of the road, yes.

Q And do you remember what direction the water drained in those ditches, Mark?

A They would drain towards 343.

Q Now, at the time that the water drained towards 343 when you lived on the premises, did you ever notice any ponding right here in front of Pop's house right here? Did you ever notice any flooding here in this area at the time he had the old road and the drainages? Did you notice any of this flooding we talked about at that time?

A This is the house here?

Q This is the house here. Did you ever notice any

* * * *

you.

Do you remember if there was a cattle guard?

A They had a cattle guard and a gate next to it.

Q Now do you remember if the water drained in that public ditch when Pop had the cattle guard? Do you remember if there was water that flowed —

A Right, he did, right.

Q Do you remember what direction it flowed into?

A It did flow into 343.

Q Do you remember after it got into 343 whether it went north, south or both? Do you remember if it went towards the Leger Road or towards this way? Do you remember?

A No, I couldn't tell you which way it went.

Q Well, that's okay.

Now, when you went back on the property, when you went back on the property since Mrs. Bearb has moved the road, did you notice if there's any kind of ditches next to her new road?

A They had this culvert right here. That's the only thing that I was really noticing was where this culvert was.

THE COURT: They had put a new culvert in with the new road somewhere? Is that what you're saying?

THE WITNESS: Yeah.

BY MRS. BENSON:

Q And do you remember about where the culvert was,

* * * *

Q. ". . Did you at any time see any kind of a ditch going back on Tr.4 here or Tract 2 (north) or did you ever see any kind of a ditch going back, going over the ridges in any way?

A No, not beyond the house.

THE COURT: You're talking about running west to east in those tracks?

MRS. BENSON: Right. In other words going this way.

BY MRS. BENSON:

Q Did you ever see any ditches Pop had? Did you ever see any ditches Pop had to drain water here?

A Going this way or this way?

Q No, going in the back.

A No, no.

* * * *

THE COURT: He's asking about prior to that time, I believe. Isn't that the question?

MR. BRANDT: Yes, sir, Your Honor, that's very explicitly what I asked.

THE COURT: In the old days.

MRS. BENSON: Sorry.

A Well, you know, it wasn't wet there.

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* * * *

THE WITNESS: No sir, it was not.

BY MR. BRANDT:

Q Was there any culvert in the public ditch running under the highway?

A I don't think so, but I can't swear to that. I don't remember one, but I couldn't swear to it.

Q You remember the cattle guard was on the other side?

A Yes, most definitely.

Q Okay. Have you been out there recently?

A I visited my nephew who lives across the street here recently, yes. I have not been on the property.

Q Okay, you didn't go on the property?

A No.

Q Okay. If there's water standing here where this purple area is or even in front along the dividing line between Lois Bearb's property and the plaintiff's property, let's say in this general vicinity, had you ever noticed water standing in that area before?

A No, no. I would say if there's any standing water there, it's based on the old site — you know, it might not be leveled just right, but there should be no water there, and if there is, it should be pretty simple to drain it.

Q How would it drain?

A Well, you can go —

MRS. BENSON: Wait a minute. He's not a drainage expert.

THE COURT: Excuse me, seems like he should know someting about that being a geologist.

MRS. BENSON: But he's not in that field, Your Honor. It's like my expert I wanted to testify about appraising —

THE COURT: I think if he's an expert in geology at that point —

MR. BRANDT: I offer Mr. E.J. Faul as an expert in the field of geology.

MRS. BENSON: I object to him testifying as a drainage expert, because, if you'll recall, my engineer, Mr. Langlinais, works in areas of appraisal through subdivisions, and he even does partitions, so he has experience, but we didn't allow him to testify as an appraisal expert, and the same is true. There are likes in that Ewell Faul is not an engineering expert and he doesn't do drainage. He's really a very, very biased witness.

THE COURT: Well, bias doesn't go to his expertise. I'm going to overrule your objection. I'm going to qualify this witness as a geologist. He certainly is one.

All right, you may ask him his opinion.

MR. BRANDT: Thank you, Your Honor.

* * * *

Q You mentioned the Faul Energy Company that you had at one time.

A Yes.

Q When did you have the Faul Energy Company?

A It was in either '82 or '83. Let's see, probably '84, 1984.

Q What does the Faul Energy Company do?

A Look for oil and gas, or it did look for oil and gas.

Q Did you have any Federal Contracts?

A No, I did not.

MR. BRANDT: I object. This is irrelevant.

THE COURT: What's the relevance of contracts with this company?

MRS. BENSON: Well, there was a reason, Your Honor. There is —

THE COURT: You may have a reason but I need a reason.

MRS. BENSON: Yes, I will give you my reason.

THE COURT: No, I mean, what reason for the case? Is that relevant?

MRS. BENSON: Maybe I can answer your question by asking another question, then if it's not answered, I will try to answer it.

THE COURT: No, that's not the way we do it. You have to state the relevance at this time.

MRS. BENSON: My reason is, Your Honor, that it is my understanding that somebody has decided that it is a land treatment area, water shed.

THE COURT: And? And if?

MRS. BENSON: Well, I don't like that idea with my property. I never approved any such thing nor would I approve of any such thing —

THE COURT: You own it, so you don't have to. I don't think that's relevant. Let's go on to the next question. I'll sustain the objection.

MRS. BENSON: There is new interest in the oil industry in the immediate area where this land —

MR. BRANDT: Your Honor, I think the Court's ruled. Could we go ahead and move along?

THE COURT: This is another reason.

MRS. BENSON: There is new interest in the area in a well, and

people are going around sending letters to buy oil interests and to lease, so as you well know, they need not drill a well on your land to include you in it. They can pool you in it, you know, so from that standpoint Ewell could have an interest. I may be wrong.

THE COURT: He doesn't have an interest unless you sign up. I'll sustain the objection on that.

Q Now, this south ditch that you talked about, I believe you talked about a south ditch along here?

A A cross ditch to the south, yes.

Q When was the last time you saw that ditch?

A Oh, that I noticed it, it's probably been a long time. I can't tell you for sure, but probably —

Q About how long?

A Maybe ten years. I never paid attention to that ditch after I left there.

Q So you have no way of knowing if this ditch is obstructed on Leslie's land?

A I don't know whether it is or not. I don't know. I can't answer that.

Q If I showed you a picture of it, would you —

A Depending on picture. I don't know if I can tell anything from your pictures, but I'm not qualified to testify as to whether the ditch is plugged up now or not. I have not looked at it.

Q If you looked at a picture —

MR. BRANDT: Your Honor, I object. It wouldn't be any good for him to look at a picture.

THE COURT: Probalby not as of now, as of what — he's really not familiar with —

MRS. BENSON: Well, it's been established anyway from other witnesses that it's full of trees.

BY MRS. BENSON:

Q So I believe you are recommending that water flow into this ditch?

A Sure, and clean this one out also.

Q Yeah. Well then if the three and a half —

THE COURT: This one also, that's along the Trahan line?

THE WITNESS: Yes, sir, along that fence line there.

BY MRS. BENSON:

Q If for three and a half years only the part of the ditch on my land was open and the ditch on Leslie's land and the west ditch was plugged up with trees, then the water would have to come up and stand —

A I don't know what he's going to do, I'm just telling you the way to drain it.

Q Hypothetically if you were accepting the fact that this ditch is obstructed with trees and this ditch is obstructed with trees — and I have two pictures showing that evidence in the recovered and there's the testimony of others —

THE COURT: Just ask him hypothetically if the old existing ditch is obstructed and this Trahan ditch is obstructed —

THE WITNESS: You're not going to have any drainage * * *

* * * * *

[265] * * * then that there is evidence of a ditch flowing south here —

A I didn't see that evidence. Oh, you mean this flowing south? Yeah, okay, I'll agree.

Q Why is ther evidence of the south ditch and there is no evidence of this water you said used to drain north?

A I don't know what happened to this ditch across, but there was a ditch directly opposed to this one back on this side that we'd drain. It wasn't as deep a ditch as we had here that would drain this side of the road, and I don't ever remember any culverts under the road, ever.

Q Well, do you know who put the culverts there?

Q You talked to Mrs. Bearb, did you not?

A I don't know what that would do.

Q So you do admit that there is evidence of the ditch? You have seen an existing ditch, south ditch, here?

A Yes.

[110] MRS. BENSON: Okay. Line 11 with the question:

"Show me where you put this second.

Well, first of all, did you put a second culvert near my property, and show me where you put it."

Answer: "There was a culvert installed at the end, almost at the end of the new road, that drained into the ditch alongside the road."

Question: "Yes, but it drains — and the way where you put the culverts, it now — it has been draining on me for two years,hasn't it?"

Answer: "No, no, this water goes on me. This water drains on me. It's from my — if's from your property to mine, and the water comes from your property and drains on my property, and that was the purpose of the culvert."

So she admitted that I was supposed to drain on her, only since she moved the road and changed the drainages, she drains on me for three and a half years, so that's the most important part of this, and the part where she had refused to correct the word — that's not important though.

THE COURT: No.

MRS. BENSON: No.

She also, of course, admitted to me about the
[111] road, so we won't enter this.

THE COURT: Fine.

MRS. BENSON: As to the expert of the opposition, Your Honor, I had tried to take his deposition and he didn't appear, and later I had written counsel with objections, but it's a letter from me to counsel, but if I have to enter that, maybe I can do it later.

THE COURT: Well, if this was to take a discovery deposition and they would not produce, that is a discovery matter. You should have taken that up with the magistrate during the discovery period rather than now about the failure to appear.

MRS. BENSON: Well, I will handle it later if they come up with something that I haven't received, for example. I will just simply object.

THE COURT: All right.

MRS. BENSON: And in closing, I would like to say that the drainage, the problems on my property, are getting worse. Mr. Langlinais who testified has not been there for about a year, and the effects of the drainages of the water reverting on me for three and a half years is getting considerably worse. It's obvious, and of course it's far more obvious after a rain, but you can tell the damages it's causing, and if it's not [112] stopped soon, there will be a ditch surrounding my house on the south side and the north side of — well, what I mean by that is the ponding in front will stay there, the front of the house, and then that part on Tract 2 where they're making tracks with the truck, there was never any ditch on either side. If that continues, there will be holes there, so I would have a pond in front, a ditch on the south side and then a ditch in the back of the barn, and not any of that was ever there before. As we've seen in pictures, there are ridges in front and in the back, and there is a low area but it's immediately near the gully, and another low area is at Tract 1, but I think we established that also. The elevation patterns clearly show that.

I feel that in view of their agreements, I have a right to a hard surface road, and I certainly had a right to expect that they would not alter the drainages.

I did a little research this weekend, and I noted that at 694 of the civil code —

MR. BRANDT: Your honor, I object to her argument.

MRS. BENSON: Maybe I could do it later.

THE COURT: Right now we're just getting testimony, not the law.

S.J. LANGLINAIS & ASSOCIATES, INC.
Consulting Engineers - Land Surveyors

2419 Old South Plaza
Hwy. 14 B-Pass
Abbeville, Louisiana 70510

Office Phone 318/893-7643
Home Phone 318/937-6788

January 11, 1986

RE: LOUELLA F. BENSON PROJECT
ENGINEER'S SURVEYOR'S REPORT

1. The Partition, Recordation #681945, Parish of St. Landry Louisiana, called for 47.46 acres. Actually on ground 46.892 acres were found in our survey. Total difference in acres is 0.588 acres of approximately 0.6 acres which is similar to the acreage in new passage extending from Highway 343 to the family homesite.

2. Drainage topographic survey shows clearly that the natural drainge pattern is such that the house is setting on top of a ridge and the water standing in front of the home should be made to drain toward Louisiana Highway 343. In order to accomplish this, it will be necessary to deepen both road ditches along Faul Road equally and to properly "turtleback" the road. At present the low spot in front of the house cannot drain because it is blocked by the ridge along the homesite and the drainage pattern has been changed as evidenced by the elevations taken along the new Faul Road. The drainage could be restored by digging the road ditches along both sides of Faul Road. It is also apparent that there is a drainage ditch running south through tracts 4 and 5, through the Leslie Faul property. The portion of the ditch through Leslie Faul's property is heavily overgrown with vegetation and bushes and is preventing the drainage water from flowing in that direction. The topographic data at that point reveals that the natural drainage is to the south through Leslie Faul property. This obstruction clearly prevents the water from draining properly and is conducive to the flooding problem on your property.

3. The plat attached to the Partition also depicts that the division line separating tracts 3 and 4 runs through a portion of the porch located on the northeast corner of the house.

4. It is apparent that an earth obstruction was placed in the Public Road ditch along the East side of La. Hwy. 343 in front of the new passage to the old homesite. This obstruction should be removed to allow the water on the south side of the passage to flow to the North, which is where the natural drainage pattern flows.

5. I have also prepared an engineering estimate for the cost of repairing the existing damages on Faul Road in order to correct the existing drainage problems and property damages including the cost of making an all-weather road. This Engineering estimate is attached as part of this report. The property will be in a devalued condition as long as the drainage problem exists and if heavy rainfall persists for any period of time the stagnated water problem will increase.

/s/ Stephen J. Langlinais
Stephen J. Langlinais, P.E., LS.

[SEAL]
STATE OF LOUISIANA
STEPHEN J. LANGLINAIS
REG. No. 4251
REGISTERED
LAND SURVEYOR

S.J. LANGLINAIS & ASSOCIATES, INC.
Consulting Engineers — Land Surveyors

2419 Old South Plaza
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Abbeville, Louisiana 70510

Office Phone 318/893-7643
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January 11, 1986

ENGINEERING ESTIMATE FOR CORRECTING ROAD PROBLEMS ON FAUL ROAD

1.	Re-digging ditches on both sides by motor grader 2 days x 8 Hours at $65.00/Hr.	$ 880.00
2.	Re-shelling road with limestone 20 feet wide by 1413 feet long by 5/12 feet thick = 436 c.y.; 27 cu. ft./c.y.: 436 cu. yds. at $25.00/cu. yd. (based on $3,000 lbs./ton)	$10,902.00
3.	Refilling holes holding water created by alteration of drainage pattern	
	a.) On north side of Faul Road 200' x 1' high = 740.7 cy; 740 cy. top soil at $10.00/cy	$ 7,400.00
	b.) On south side of Faul Road near home 200 c.y. at $10.00/c.y.	$ 2,000.00
	TOTAL	$21,182.06

Petitioner attaches Excerpt in record from the Handbook "American Civil Engineering Practice" for Steam-Flow Characteristics. Inserted and circled on the attached sketch from the Civil Engineers handbook are those key invert elevations from Mr. Langlinais' plat to represent the profile of the public ditch adjoining the J.B. Faul Estate together with two dashed lines connecting the three key elevations. On the left side is the invert elevation in the ditch at Tr. 5. In the middle is the invert elevation in the ditch at Tr. 3 and on the right side is the invert elevation in the ditch at Tr. 1. The direction of flow is northward, marked N, to correspond with the flow in the public ditch if the obstruction in the public ditch were removed. Mr. Wolfe, opposition's expert, testified that their *differences* in elevations from their benchmark were substantially the same whether derived from his plat or from Mr. Langlinais' plat. (Also keep in mind, Bearb placed the obstructions in public ditch in Dec. 1983 and D.O.T.'s Leblanc made excavations in front of tracts 4 and 5 in 1984. The elevations were taken in 1986 after Trs. 4 and 5 had been deepened and obstructions prevented the flow in front of Tr. 3 for two years at that time and as shown also Mr. Wolfe's plat shows that he simply did not pick up elevations in lower part of Tr. one!

AMERICAN CIVIL ENGINEERING PRACTICE

In Three Volumes
VOLUME II

Prepared by a Staff of Specialists
Under the Editorship of

ROBERT W. ABBETT

NEW YORK : JOHN WILEY & SONS, INC.
LONDON : CHAPMAN & HALL, LIMITED

5. STREAM-FLOW CHARACTERISTICS

1 General. Flow in natural channels assumes many forms. No single word or phrase has been devised that describes it adequately. It is classed as unsteady, and as non-uniform or varied, signifying that for any given channel not only is its rate of discharge inconstant, but also the shape of its cross section, its hydraulic gradient, and its bed and bank roughness all vary from section to section. Furthermore, the individual cross sections alter their dimensions as stage and discharge change. Movable-bed channels exhibit this latter characteristic in greater degree than channels having firm beds and banks or those carrying small bed loads.

2. Energy of Stream Flow. Potential and kinetic forms of energy in stream flow are convertible and present a wide range of utilization in engineering pracice. These two forms, which are ever present in flowing water, make up the sum total of stream-flow energy. Their relation in any given cross section is expressed by

$$E = H + @\frac{V^2}{2g} \qquad 1$$

where E is the total energy content per unit discharge across the section, * * * and $\frac{@\ V^2}{2g}$ is the kinetic energy expressed in terms of velocity head required to impart forward movement across the section.

The energy gradient $A_1\ B_1$ in Fig. 11 is an imaginary line drawn above the water-surface

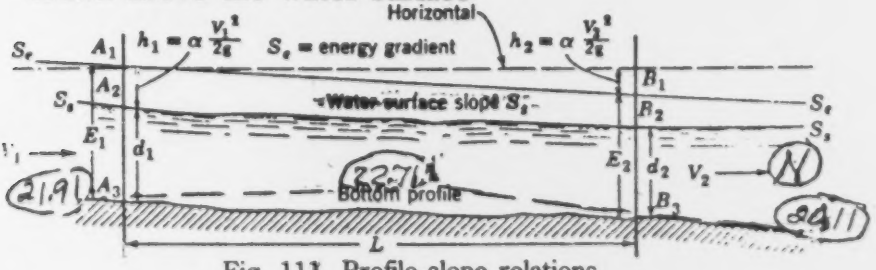


Fig. 11. Profile-slope relations.

profile by an amount, at any given point, equal to the kinetic energy represented by the velocity head h_1, h_2 and fall equal to $L \times S_e$, which is the measure of the kinetic energy expended by the water flowing the distance L between cross section A_1A_3 and B_1B_3. This energy expenditure is expressed by:

$$E_f = wQLS, \tag{2}$$

where w is the weight of a cubic foot of water, Q the rate of discharge in cubic feet per second, L the length of the reach and S_e the slope of the energy gradient. In terms of longtitudinal foot of channel, E_f may be expressed by:

$$E_f = wQS_e \tag{3}$$

For river-engineering purposes the energy gradient, S_e may be conceived as built up of respective increments of slope demands as follows:

$$S_e = S_f + S_t + S_e + S_b + S_e \tag{4}$$

where S_f is the slope required to overcome the resistances to flow in the forms of viscous shear along bed and banks, and of internal fluid shear, collectively called friction losses; S_t is the slope required to create turbulence of flow; S_e is the slope required to transport the suspended and dissolved solids: S_b is the slope required to transport the bedload; and aS_e is the slope required to erode bed and banks.

Of the foregoing, S_f, S_t, and S_e are termed functional-energy expenditures because without them there can be no stream flow in the ordinary meaning of that term. The last

* * *

6432 Montrose St.
Alexandria, Va. 22312

December 1, 1983

Dear Leslie:

The news from you over the phone last night that Izena on November 30, '83 has again confirmed verbally that she too is willing to let me purchase the improvements at the newly appraised price of $18.800. should simplify the agreement between you and me since you also said that Lois had again confirmed verbally to you on Nov. 29, 1983 that she would go along as per the proposals and representations made on Oct. 31, 1983 and Nov. 21, 1983.

* * * * *

Again, as per our conversation this morning,I thought that the road was community property and you informed me today that that was not the case but that I would have access to the road. * * * Since you have agreed to sell to me please see that the agreement states that you retain the rights to have access to the road. * * *

* * * * *

Love, Louella

AGREEMENT BETWEEN LESLIE FAUL AND LOIS FAUL BEARB

We the undersigned hereby agree that we are now agreeing in writing as we had agreed verbally to divide Tract No. (3), a certain parcel of land known and designated on a plat of survey by Morgan J. Goudeau, Jr., C.E., under date of November 20, 1981 as Tract Number Three (3) containing 9.37 acres of land, designated further as Leslie Faul and Lois F. Bearb, in Sec. 23 T 8 S R 3 E, St. Landry Parish, State of Louisiana, at Coulee Croche, Lne, bounded as per the plat of survey, North by Tract No. 2, South by Tract No. 4, said plat of survey and East by Mrs. Ferriol Leger, and West by Louisiana Hwy. 343.

As to the division of the land only on the above mentioned Tract 3, containing 9.37 acres, I Leslie Faul will take the rear 4.685 acres constituting one-half (1/2) of Tract 3. I retain my rights to use the Faul road from the house to Hwy. 343 to go to and from my property.

As to the division of the land only on the above mentioned Tract 3, containing 9.37 acres, I Lois Faul Bearb will take the front 4.685 acres constituting one-half (1/2) of Tract 3.

We further state that we no longer desire to own the land constituting Tract No. 3 (as described above) together and we free each other from any proposals to buy and/or sell to each other.

Witnesses:

_____ Date_____

_____ Date_____

_____

Leslie Faul

Date _____

_____

Leslie Faul

Date _____

Front of Tr.2

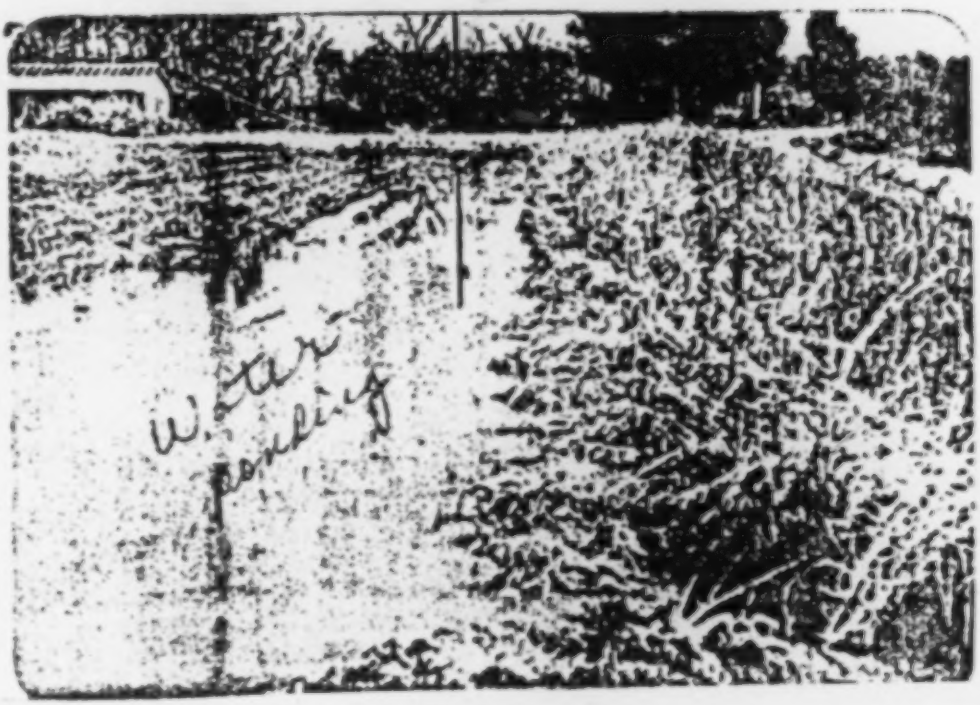
Trial Exhibit 24-DD

Trial Exhibit 24-ZZZ

Ditch D.O.T. dug in front of Tr.4

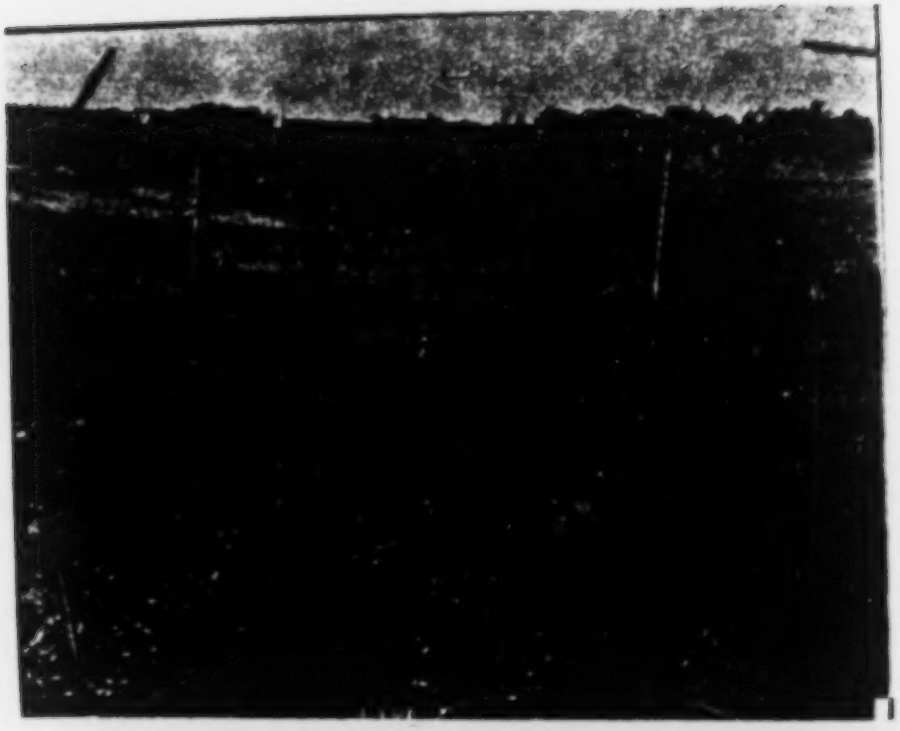
Attached to Leslie Faul's letter of 3/26/82.

E



W

Trial Exhibit 24-KK



Trial Exhibit 24-E

E

W

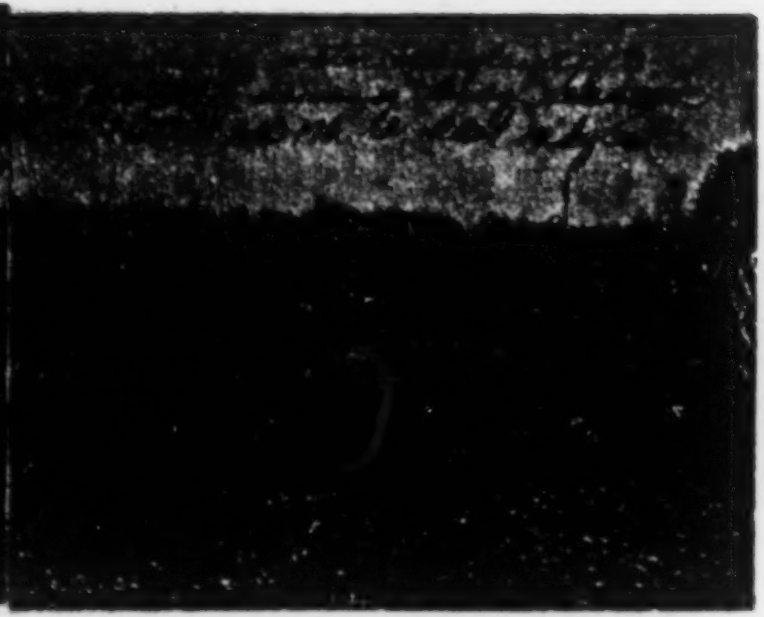
N

W

Ridges North & East standing water on plaintiff's property in dry season.

S

N



E

Standing water on plaintiff's property during dry season. Note North & East ridges

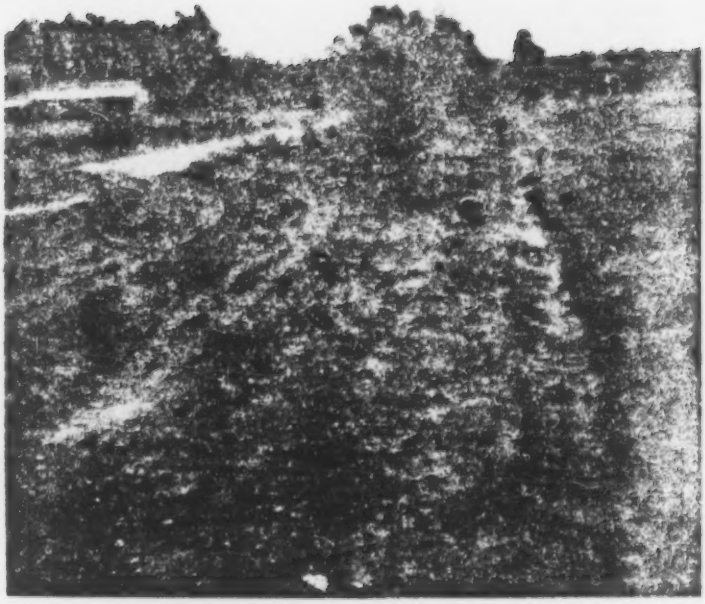
S

water draining
in public ditch

Dirt
Obstruction

Dirt obstruction in public ditch

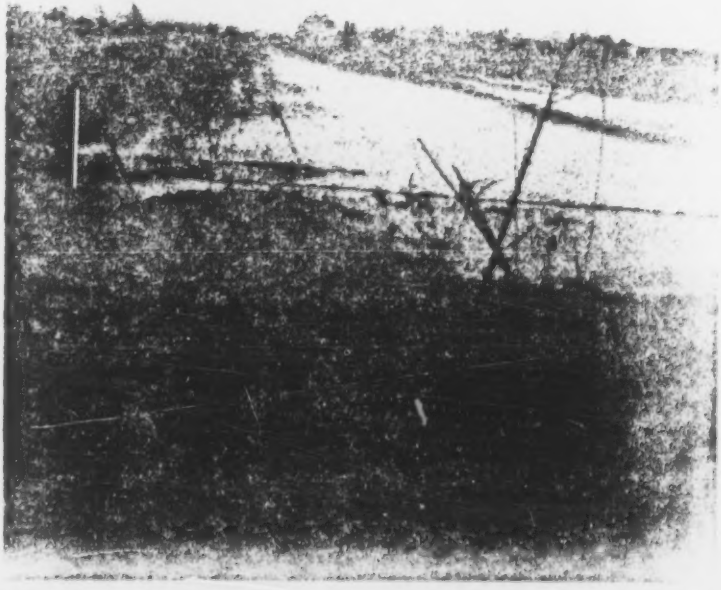
old road



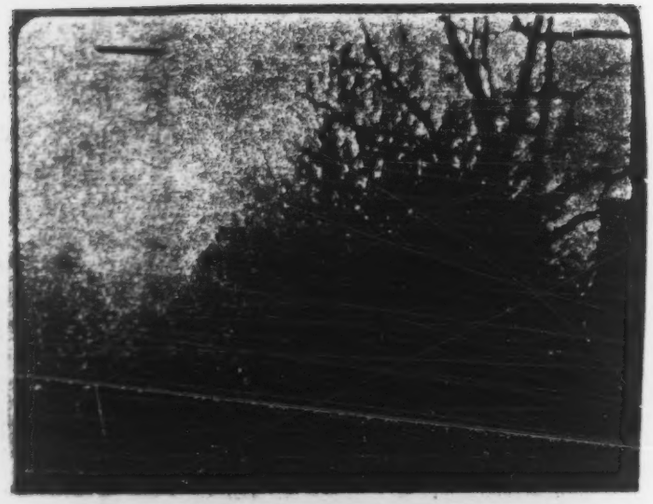
new "ditch"

Dec. 1983
"New Road"

Note: Faul estate does drain into Highway 343. At *midway* in 1983 Bearb *redesigned* new "ditches" to drain on me.



Standing water where old road and covered up ditches were which was taken in 1987.



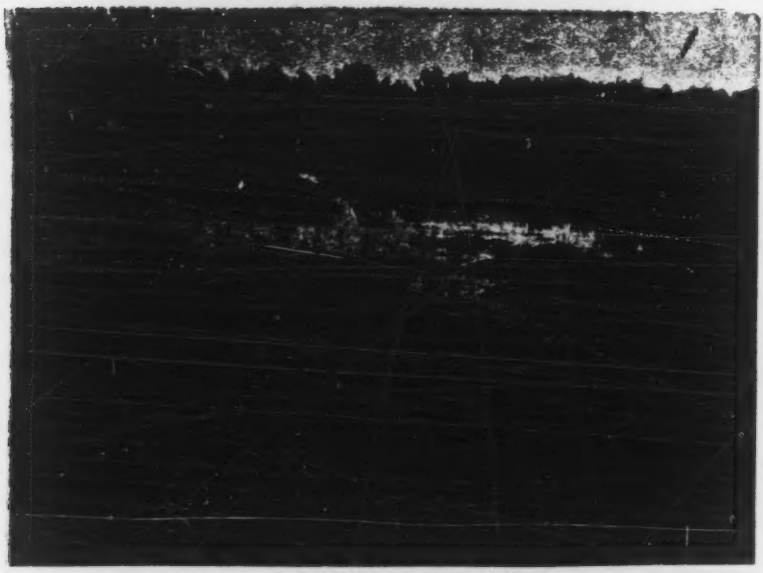
Trial Exhibit 24-T, Tr.5 — Leslie Faul's obstructed East-West Ditch

Tr.5
Faul

Benson
Tr.4

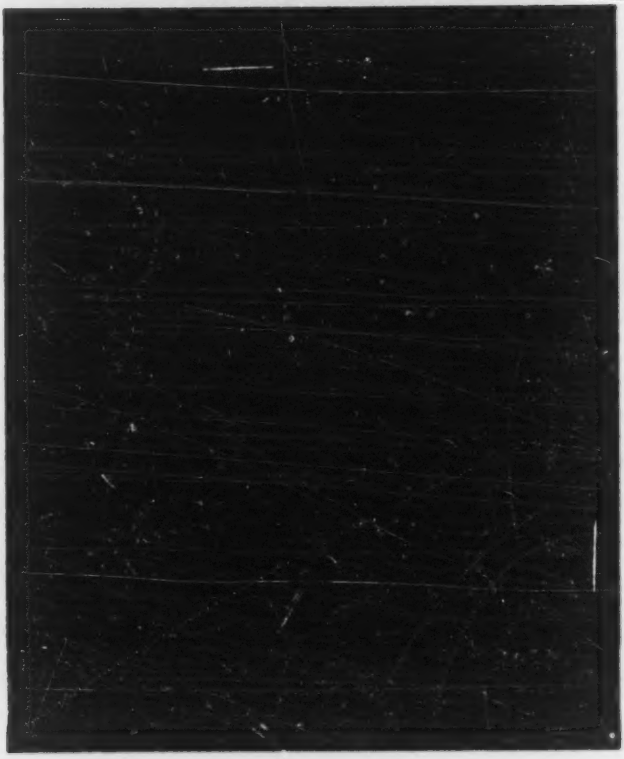
Trial Exhibit 24-R Leslie Faul's south obstructed Tr.5 and Benson's south ditch Tr. 4.

Cattleguard after Bearb removed it from public ditch 1983

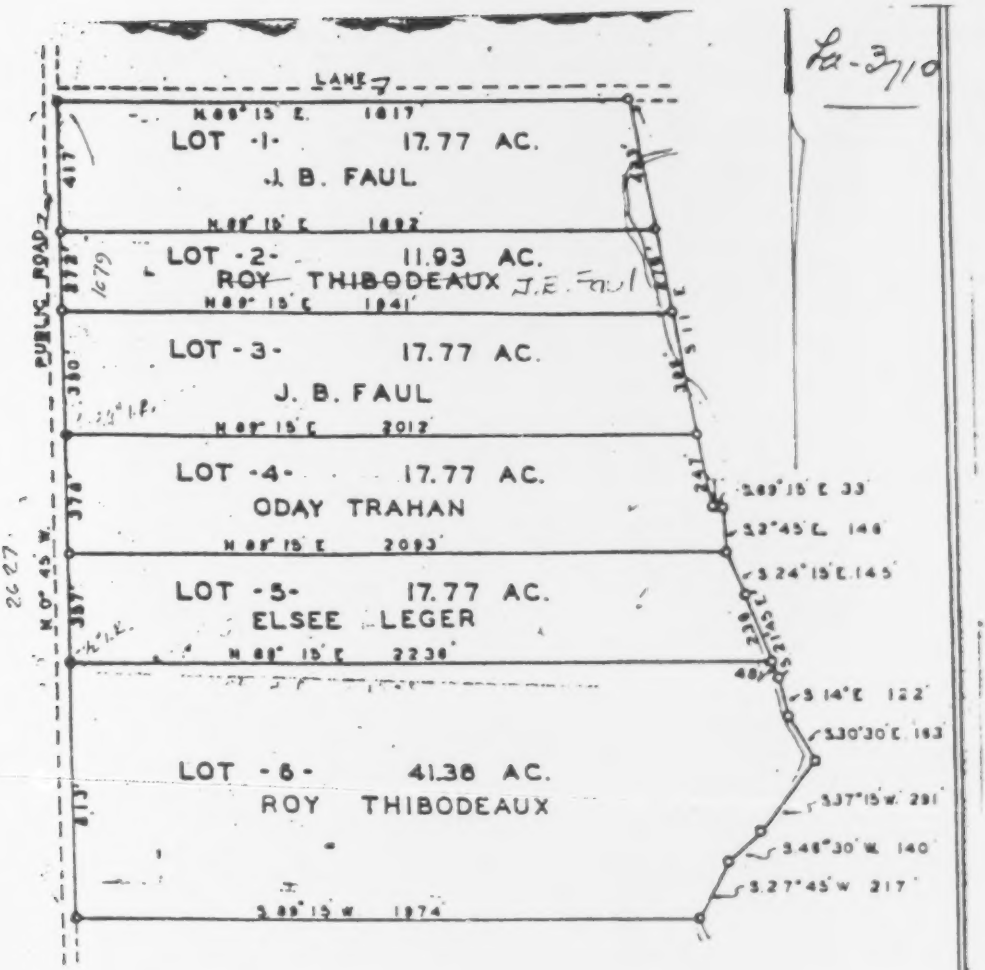


Note: Bearb tried the North-South *cuts* where she covered up old North ditch next to old road but it does not work. Water drains west into Hwy 343 but since 1983 it has been ponding on petitioner because they altered drains.

Old Faul Limestone Road



New Passage - 1987



Map showing survey made for
J. B. FAUL & OTHERS
situated in Sec. 23 of T. 8 S. R. 3 E. of
St. Landry Ph., La.

Scale - 1 in. = 400 ft.
Opelousas, La.,
Dec. 22 1939

W. J. Goudeau, Jr.
Civil Engineer

SUBRA:

* * * * *

* * * obstruction in that public ditch where water had nowhere to go but on a person's property, then could it contaminate that person's property?

A If there was something in the ditch and the water flowed through the ditch and then on to the property, it could carry that component on to the property.

THE COURT: Let me ask you, in the concentrations you found in the samples, could they be carried — what's the distance from the ditch to the property of the plaintiff?

MR. BRANDT: Some of her property is on the ditch and some of her property is about nine hundred feet from the ditch.

THE COURT: All right, let's take —

MR. BRANDT: I don't know where the samples were from.

THE COURT: Let's take the other distances. Could the concentrations you found be carried by water that far and still have the concentrations that you found in your samples nine hundred feet away carried by water and deposited?

THE WITNESS: Yes, depending on the concentration of the origin of the contamination and depending on what kind of flows you had across the property; yes, it can carry it for miles.

THE COURT: All right.

MRS. BENSON: Your Honor, please stop me if I'm not allowed to ask this question, but on this chemical oust that we talked about, I would like to ask the witness if she is familiar at all with oust.

BY MRS. BENSON:

Q Are you familiar with the chemical oust and what it's used for?

A It's a herbicide. It's used on non-crop plant areas to defoliate the areas.

Q Would you say it would kill grass?

A Yeah.

Q The precautions, is it allowed in areas where it would flow on to farm land or fish ponds or where there are people, plant, animal, fish?

A No, it is not.

Q And are you familiar with the chemical spike?

Yes.

Q And would that be true, what you just testified to, as to the chemical spike also?

A It has the same properties and there are warnings for use, yes.

Q As you just testified to?

A Yes.

Q And do you know if either or both are experimental overflows on to my property, do you have any idea of the longevity of either spike or oust on land? We went into the effects, I believe.

A First of all, if it's used in a situation like that and it overflows on to the land, that's an opposition to the label restrictions.

Q That would be a violation of the restrictions?

A According to the labeling information and based on some other herbicides that I have dealt with, they're given a residual that would last about a year. Normally herbicides at a lot lower

concentrations will have a residual anywhere from two to three years, so it could be two to three years depending on the concentration at which it was applied in the ditch or canal that you're talking about.

Q Do you know anything about the effects of either oust or spike on people, animals, plants, fish?

A Just what's contained in the labeling information.

Q Do you recall what that was?

THE WITNESS: Can I read from it?

THE COURT: If she's just relying on what you read, if you made no testing —

THE WITNESS: Right.

MRS. BENSON: So we can't use that?

THE COURT: That would be the same objection, same ruling.

* * * * *

Tr. 4
Dark Spots
Benson

Tr. 4
Dark Spots
Benson